

1 HOUSE BILL NO. 64

2 INTRODUCED BY T. MOORE

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING TELECOMMUNICATION ACCESS SERVICE LAWS
6 FOR PERSONS WITH DISABILITIES; ELIMINATING THE GOVERNOR'S COMMITTEE ON
7 TELECOMMUNICATIONS ACCESS SERVICES FOR PERSONS WITH DISABILITIES; AUTHORIZING THE
8 DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO OVERSEE THE PROGRAM TO PROVIDE
9 SPECIALIZED TELECOMMUNICATIONS EQUIPMENT AND SERVICES TO PERSONS WITH DISABILITIES;
10 TRANSFERRING RULEMAKING AUTHORITY TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN
11 SERVICES; AMENDING SECTIONS 53-19-302, 53-19-305, 53-19-306, 53-19-307, 53-19-308, 53-19-309, 53-
12 19-310, 53-19-311, 53-19-315, 53-19-316, 53-19-317, 53-19-318, AND 53-19-319, MCA; REPEALING
13 SECTIONS 2-15-2212, 53-19-303, AND 53-19-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
14 DATE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
1718 **Section 1.** Section 53-19-302, MCA, is amended to read:19 **"53-19-302. Definitions.** As used in this part, unless the context requires otherwise, the following
20 definitions apply:21 ~~(1) "Committee" means the committee on telecommunications access services for persons with~~
22 ~~disabilities established in 2-15-2212.~~23 ~~(2) "Department" means the department of revenue.~~24 ~~(3)(1)~~ "End user connection" means a customer's connection to a service provider's network.25 ~~(4)(2)~~ "Mobility-disabled" means the condition of a person with reduced function of the arms, legs, or
26 hands making activities related to moving, turning, or pressing objects difficult or impossible. The term includes
27 difficulty in using a wide range of telecommunications equipment.28 ~~(5)(3)~~ "Net amount billed for the fee" means the gross amount billed for fees imposed by 53-19-311,

1 less adjustments for uncollectible accounts, refunds, incorrect billings, and other appropriate adjustments.

2 ~~(6)(4)~~ "Person with a disability" means ~~the condition of~~ a person who is deaf and blind, deaf, hard-of-
3 hearing, speech-disabled, or mobility-disabled.

4 ~~(7)(5)~~ "Program" means the program established in 53-19-306.

5 ~~(8)(6)~~ "Service provider" means an entity that offers services to subscribers in Montana to allow two
6 or more persons in different locations to communicate orally, without regard to the technology or medium the
7 entity uses to provide the telecommunications service, and access to telecommunications relay service. The
8 term includes providers of telecommunications service, including but not limited to providers of internet
9 protocol-enabled voice communications service.

10 ~~(9)(7)~~ "Specialized telecommunications equipment" means any telecommunications device that
11 enables or assists a person with a disability to communicate with others by means of the public switched
12 telephone network or internet protocol-enabled voice communications service. The term includes but is not
13 limited to text telephones (TTY), amplifiers, signaling devices, puff-blow devices, electronic artificial larynx
14 devices, telebraille, and equipment for the mobility-disabled.

15 ~~(10)(8)~~ "Subscriber" means an end user who receives telecommunications network access from a
16 service provider.

17 ~~(11)(9)~~ "Telecommunications" means the transmission, between or among points specified by the
18 user, of information of the user's choosing without a change in the form or content of the information upon
19 receipt.

20 ~~(12)(10)~~— _____ "Telecommunications relay service" means a service that permits full and simultaneous
21 communication between those using specialized telecommunications equipment and those using conventional
22 telephone equipment or any other technology or equipment, including but not limited to personal computers and
23 videophones."

24

25 **Section 2.** Section 53-19-305, MCA, is amended to read:

26 **"53-19-305. Power and duties.** The ~~committee~~ department of public health and human services shall
27 oversee administration of the program provided for in 53-19-306. ~~In fulfilling this duty, the committee~~ and shall:

28 (1) establish policies and procedures governing administration of the program;

- 1 (2) analyze and approve a budget for administration of services under the program;
- 2 (3) monitor the expenditure of funds for the program;
- 3 (4) provide for administration of eligibility and the delivery of services for the program as provided
- 4 for in 53-19-306 through 53-19-309;
- 5 (5) seek input from the public and people with disabilities who use specialized telecommunications
- 6 equipment when developing or amending program policies; and
- 7 ~~(5)~~(6) perform any other duties necessary to properly oversee administration of the program."

8

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

10 **"53-19-306. Program established -- purpose.** (1) The ~~committee~~ department of public health and

11 human services shall establish and administer a program to provide specialized telecommunications equipment

12 and services to persons with disabilities.

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

14 (a) furnish specialized telecommunications equipment to meet the needs of persons with

15 disabilities; and

16 (b) provide a telecommunications relay service system to connect persons with disabilities with all

17 phases of public telecommunications service, including telecommunications service to emergency services and

18 public safety agencies as defined in 10-4-101."

19

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

21 **"53-19-307. Provision of services.** (1) In administering the program established in 53-19-306 for

22 individuals, the ~~committee~~ department of public health and human services shall:

23 (a) develop an appropriate means test to determine eligibility for specialized telecommunications

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

25 (b) require that the person with a disability be a resident of Montana and that residency be

26 maintained as a condition of eligibility for specialized telecommunications equipment;

27 (c) require persons with disabilities to provide satisfactory evidence that they have disabilities and

28 would benefit from the use of specialized telecommunications equipment;

1 (d) provide specialized telecommunications equipment to participants through loan, lease, cost
 2 sharing, or other methods that are determined appropriate by the ~~committee~~ department of public health and
 3 human services;

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

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

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

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

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

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

16 (k) adopt rules necessary to administer the program.

17 (2) In adopting rules to implement subsections (1)(a) and (1)(d), the ~~committee~~ department of
 18 public health and human services may, based ~~upon~~ on available funds, provide the specialized
 19 telecommunications equipment, without charge, to individuals whose family income is less than 250% of the
 20 federal poverty level."

21

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

23 **"53-19-308. Telecommunications relay service system -- requirements.** The ~~committee~~
 24 department of public health and human services shall contract with one or more qualified providers to design
 25 and implement a telecommunications relay service system that fulfills the purpose described in 53-19-306. The
 26 ~~committee~~ department of public health and human services shall require, under the terms of the contract, that:

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

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

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

4 **Section 6.** Section 53-19-309, MCA, is amended to read:

5 **"53-19-309. Gifts and grants.** The ~~committee~~ department of public health and human services may
6 accept contributions, gifts, and grants, in money or otherwise, to the program established in 53-19-306.
7 Monetary contributions, gifts, and grants must be deposited in the account provided for in 53-19-310."
8

9 **Section 7.** Section 53-19-310, MCA, is amended to read:

10 **"53-19-310. Account for telecommunications services and specialized telecommunications**
11 **equipment for persons with disabilities.** (1) Subject to legislative fund transfer, there is an account for
12 telecommunications services and specialized telecommunications equipment for persons with disabilities in the
13 state special revenue fund in the state treasury. The account consists of:

14 (a) all monetary contributions, gifts, and grants received by the ~~committee~~ department of public
15 health and human services as provided in 53-19-309; and

16 (b) all fees billed and collected pursuant to 53-19-311.

17 (2) The money in the account is allocated to the ~~committee~~ department of public health and human
18 services for purposes of implementing this part.

19 (3) All expenditures of the ~~committee~~ department of public health and human services in
20 administering this part must be paid from money deposited in the account."
21

22 **Section 8.** Section 53-19-311, MCA, is amended to read:

23 **"53-19-311. Special assessment.** (1) A fee of 10 cents a month must be assessed on each end user
24 connection provided and billed or any prepaid options by each service provider and is imposed for the purposes
25 of this part.

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

1 subscribers.

2 (3) (a) Each service provider that periodically bills subscribers for its services shall bill each
3 subscriber for the fee provided for in subsection (1). For subscribers who are not billed periodically, including
4 but not limited to subscribers who purchase prepaid wireless telecommunication services for a flat fee, the
5 service provider shall include in the price of the service a fee of 10 cents for each 30-day period during which
6 the subscriber is authorized to use the service or a prepaid wireless telephone service provider shall remit an
7 amount equal to the fees established in subsection (1) after collecting the amount using one of the following
8 options:

9 (i) on a monthly basis, the prepaid service provider shall collect an amount equal to the fees
10 established in subsection (1) from each active prepaid subscriber whose account balance is equal to or greater
11 than the fees established in subsection (1); or

12 (ii) the prepaid service provider shall divide the total intrastate monthly revenue by the average
13 revenue for each prepaid subscriber of the wireless industry to determine the number of prepaid subscribers.
14 The fees established in subsection (1) are then applied to the number of prepaid subscribers.

15 (b) Each service provider shall file a return provided by the department of revenue reporting the
16 amount of fees collected on access line services during the quarter. Except as provided in subsection (4), all
17 fees collected by a service provider must be transmitted to the department of revenue no later than the last day
18 of the month following the end of each calendar quarter in which the fees are collected. All fees received by the
19 department of revenue must be deposited in the account established in 53-19-310 to the credit of the
20 ~~committee~~ department of public health and human services.

21 (4) Each service provider may deduct and retain 3/4 of 1% of the total fees collected each month
22 to cover its administrative expenses in complying with the requirements of subsection (3)."

23

24 **Section 9.** Section 53-19-315, MCA, is amended to read:

25 "**53-19-315. Records -- audit.** (1) Each service provider required to collect the fee provided for in 53-
26 19-311 shall maintain and have available for inspection by the department of revenue books, ledgers, registers,
27 or other documents showing the collection of the fee for telecommunications access services and specialized
28 telecommunications equipment for persons with disabilities for the preceding 5 years or until any dispute or

1 litigation concerning the fees is resolved, whichever is later.

2 (2) At the request of the ~~committee~~ department of public health and human services or on its own
3 initiative, the department of revenue or a third party designated by the department of revenue may audit the
4 records of any service provider to ensure proper accounting of all fees billed and collected pursuant to 53-19-
5 311. Any expenses of the audit must be paid by the program."

6

7 **Section 10.** Section 53-19-316, MCA, is amended to read:

8 **"53-19-316. Service provider required to hold fee in trust for state penalty and interest.** (1) Each
9 service provider required to collect the fee imposed by 53-19-311 holds the fee in trust for the state of Montana
10 and for payment of the fee to the department of revenue as provided in 53-19-311.

11 (2) (a) A service provider that fails to file the return required in 53-19-311 must be assessed a
12 penalty as provided in 15-1-216. The department of revenue may waive any penalty as provided in 15-1-206.

13 (b) A service provider that fails to make payment or fails to report and make payment as required
14 by 53-19-311 must be assessed penalty and interest as provided in 15-1-216. The department of revenue may
15 waive any penalty pursuant to 15-1-206.

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

18 (3) (a) If a service provider fails to file the return required by 53-19-311 or if the department of
19 revenue determines that the report understates the amount of fees due, the department of revenue may
20 determine the amount of the fees due and assess that amount against the service provider. The provisions of
21 15-1-211 apply to any assessment by the department of revenue. The service provider may seek review of the
22 assessment pursuant to 15-1-211.

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

26

27 **Section 11.** Section 53-19-317, MCA, is amended to read:

28 **"53-19-317. Credit or refund for overpayment -- interest on overpayment.** (1) If the department of

1 revenue determines that the amount of fees, penalty, or interest paid for any year is more than the amount due,
2 the amount of the overpayments must be credited against any fees, penalty, or interest then due from the
3 service provider and the balance refunded to the service provider or the service provider's successor through
4 reorganization, merger, or consolidation or to the service provider's shareholders upon dissolution.

5 (2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as
6 is charged on deficiency assessments as provided in 15-1-216 from the due date of the return or from the date
7 of overpayment, whichever date is later, to the date the department of revenue approved refunding or crediting
8 of the overpayment.

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

12 (b) Interest is not allowed if:

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

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

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

18

19 **Section 12.** Section 53-19-318, MCA, is amended to read:

20 **"53-19-318. Statute of limitations.** (1) Except as provided in subsection (3), a deficiency may not be
21 assessed or collected with respect to the year for which a return is filed unless the notice of the additional fee
22 proposed to be assessed is mailed within 5 years from the date the return was filed. For purposes of this
23 section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the service
24 provider, before the expiration of the period prescribed for assessment of the fee, consents in writing to an
25 assessment after that time, the fee may be assessed at any time prior to the expiration of the period agreed
26 upon.

27 (2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed
28 after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment,

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

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

10

11 **Section 13.** Section 53-19-319, MCA, is amended to read:

12 **"53-19-319. Service provider considered taxpayer under provisions for fee.** Unless the context
 13 requires otherwise, the provisions of Title 15 referring to the audit and examination of reports and returns,
 14 determination of deficiency assessments, claims for refunds, penalties and interest, jeopardy assessments,
 15 warrants, conferences, appeals to the department of revenue, appeals to the Montana tax appeal board, and
 16 procedures relating to the application of this part apply as if the fee imposed in this part were a tax imposed
 17 upon or measured by net income. The provisions apply to the subscriber liable for the fee and to the service
 18 provider required to collect the fee. Any amount collected and required to be remitted to the department of
 19 revenue is considered a tax upon the service provider required to collect it, and the service provider is
 20 considered a taxpayer."

21

22 **NEW SECTION. Section 14. Repealer.** The following sections of the Montana Code Annotated are
 23 repealed:

24 2-15-2212. Committee on telecommunications access services for persons with disabilities -- composition -
 25 - allocation.

26 53-19-303. Term of office -- vacancies.

27 53-19-304. Officers -- meetings -- quorum -- compensation.

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