

1998 PUBLIC AND LOCAL ACTS

[No. 259]

(SB 837)

AN ACT to amend 1991 PA 179, entitled "An act to regulate and insure the availability of certain telecommunication services; to prescribe the powers and duties of certain state agencies and officials; to prescribe penalties; to repeal certain acts and parts of acts; and to repeal this act on a specific date," (MCL 484.2101 to 484.2604) by adding section 506.

The People of the State of Michigan enact:

484.2506 Violation of §484.2505; contested case; remedies and penalties; exception; finding of frivolous complaint or defense.
[M.S.A. 22.1469(506)]

Sec. 506. (1) Upon the receipt of a complaint filed by a person alleging a violation of section 505, an end user who has been switched to another provider in violation of section 505, or a provider who has been removed as an end user's provider without the end user's authorization, or upon the commission's own motion, the commission may conduct a contested case as provided under section 203.

(2) If the commission finds that a person has violated section 505 or an order issued under section 505, the commission shall order remedies and penalties to protect and make whole end users and other persons who have suffered damages as a result of the violation, including, but not limited to, 1 or more of the following:

(a) Order the person to pay a fine for the first offense of not less than \$10,000.00 or more than \$20,000.00. For a second and any subsequent offense, the commission shall order the person to pay a fine of not less than \$25,000.00 or more than \$40,000.00. If the commission finds that the second or any of the subsequent offenses were knowingly made in violation of section 505, the commission shall order the person to pay a fine of not more than \$50,000.00. Each switch made in violation of section 505 shall be a separate offense under this subdivision.

(b) Order an unauthorized provider to refund to the end user any amount greater than the end user would have paid to an authorized provider.

(c) Order an unauthorized provider to reimburse an authorized provider an amount equal to the amount paid by the end user that should have been paid to the authorized provider.

(d) If the person is licensed under this act, revoke the license if the commission finds a pattern of violations of section 505.

(e) Issue cease and desist orders.

(3) Notwithstanding subsection (2), a fine shall not be imposed for a violation of section 505 if the provider has otherwise fully complied with section 505 and shows that the violation was an unintentional and bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error. Examples of a bona fide error include clerical, calculation, computer malfunction, programming, or printing errors. An error in legal judgment with respect to a person's obligations under section 505 is not a bona fide error. The burden of proving that a violation was an unintentional and bona fide error is on the provider.

(4) If the commission finds that a party's complaint or defense filed under this section is frivolous, the commission shall award to the prevailing party costs, including reasonable attorney fees, against the nonprevailing party and their attorney.

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Effective date.

Enacting section 1. This amendatory act takes effect October 1, 1998.

Conditional effective date.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 5280 of the 89th Legislature is enacted into law.

This act is ordered to take immediate effect.

Approved July 16, 1998.

Filed with Secretary of State July 17, 1998.

Compiler's note: House Bill No. 5280, referred to in enacting section 2, was filed with the Secretary of State July 17, 1998, and became P.A. 1998, No. 260, Eff. Oct. 1, 1998.
