

REPRINT

**SUBSTITUTE FOR
SENATE BILL NO. 837**

(As Passed the Senate June 11, 1998)

A bill to amend 1991 PA 179, entitled
"Michigan telecommunications act,"
(MCL 484.2101 to 484.2604) by adding section 506.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 506. (1) UPON THE RECEIPT OF A COMPLAINT FILED BY A
2 PERSON ALLEGING A VIOLATION OF SECTION 505, AN END USER WHO HAS
3 BEEN SWITCHED TO ANOTHER PROVIDER IN VIOLATION OF SECTION 505, OR
4 A PROVIDER WHO HAS BEEN REMOVED AS AN END USER'S PROVIDER WITHOUT
5 THE END USER'S AUTHORIZATION, OR UPON THE COMMISSION'S OWN
6 MOTION, THE COMMISSION MAY CONDUCT A CONTESTED CASE AS PROVIDED
7 UNDER SECTION 203.

8 (2) IF THE COMMISSION FINDS THAT A PERSON HAS VIOLATED
9 SECTION 505 OR AN ORDER ISSUED UNDER SECTION 505, THE COMMISSION
10 SHALL ORDER REMEDIES AND PENALTIES TO PROTECT AND MAKE WHOLE END
11 USERS AND OTHER PERSONS WHO HAVE SUFFERED DAMAGES AS A RESULT OF

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1 THE VIOLATION, INCLUDING, BUT NOT LIMITED TO, 1 OR MORE OF THE
2 FOLLOWING:

3 (A) ORDER THE PERSON TO PAY A FINE FOR THE FIRST OFFENSE OF
4 NOT LESS THAN \$10,000.00 OR MORE THAN \$20,000.00. FOR A SECOND
5 AND ANY SUBSEQUENT OFFENSE, THE COMMISSION SHALL ORDER THE PERSON
6 TO PAY A FINE OF NOT LESS THAN \$25,000.00 OR MORE THAN
7 \$40,000.00. IF THE COMMISSION FINDS THAT THE SECOND OR ANY OF
8 THE SUBSEQUENT OFFENSES WERE KNOWINGLY MADE IN VIOLATION OF
9 SECTION 505, THE COMMISSION SHALL ORDER THE PERSON TO PAY A FINE
10 OF NOT MORE THAN \$50,000.00. EACH SWITCH MADE IN VIOLATION OF
11 SECTION 505 SHALL BE A SEPARATE OFFENSE UNDER THIS SUBDIVISION.

12 (B) ORDER AN UNAUTHORIZED PROVIDER TO REFUND TO THE END USER
13 ANY AMOUNT GREATER THAN THE END USER WOULD HAVE PAID TO AN AUTHO-
14 RIZED PROVIDER.

15 (C) ORDER AN UNAUTHORIZED PROVIDER TO REIMBURSE AN AUTHO-
16 RIZED PROVIDER AN AMOUNT EQUAL TO THE AMOUNT PAID BY THE END USER
17 THAT SHOULD HAVE BEEN PAID TO THE AUTHORIZED PROVIDER.

18 (D) IF THE PERSON IS LICENSED UNDER THIS ACT, REVOKE THE
19 LICENSE IF THE COMMISSION FINDS A PATTERN OF VIOLATIONS OF
20 SECTION 505.

21 (E) ISSUE CEASE AND DESIST ORDERS.

22 (3) NOTWITHSTANDING SUBSECTION (2), A FINE SHALL NOT BE
23 IMPOSED FOR A VIOLATION OF SECTION 505 IF THE PROVIDER HAS OTHER-
24 WISE FULLY COMPLIED WITH SECTION 505 AND SHOWS THAT THE VIOLATION
25 WAS AN UNINTENTIONAL AND BONA FIDE ERROR NOTWITHSTANDING THE
26 MAINTENANCE OF PROCEDURES REASONABLY ADOPTED TO AVOID THE ERROR.
27 EXAMPLES OF A BONA FIDE ERROR INCLUDE CLERICAL, CALCULATION,

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Sub. S.B. 837 (S-4) as amended June 23, 1998

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1 COMPUTER MALFUNCTION, PROGRAMMING, OR PRINTING ERRORS. AN ERROR
2 IN LEGAL JUDGMENT WITH RESPECT TO A PERSON'S OBLIGATIONS UNDER
3 SECTION 505 IS NOT A BONA FIDE ERROR. THE BURDEN OF PROVING THAT
4 A VIOLATION WAS AN UNINTENTIONAL AND BONA FIDE ERROR IS ON THE
5 PROVIDER.

6 (4) IF THE COMMISSION FINDS THAT A PARTY'S COMPLAINT OR
7 DEFENSE FILED UNDER THIS SECTION IS FRIVOLOUS, THE COMMISSION
8 SHALL AWARD TO THE PREVAILING PARTY COSTS, INCLUDING REASONABLE
9 ATTORNEY FEES, AGAINST THE NONPREVAILING PARTY AND THEIR
10 ATTORNEY.

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

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