

SUBSTITUTE FOR  
HOUSE BILL NO. 5116

A bill to amend 1991 PA 179, entitled  
"Michigan telecommunications act,"  
by amending section 506 (MCL 484.2506), as added by 1998 PA 259.

**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 OR 507, an ~~end user~~  
3 END-USER who has been switched to another provider OR HAD SERV-  
4 ICES ADDED in violation of section 505 OR 507, or a provider who  
5 has been removed as an end-user's provider without the end-user's  
6 authorization, or upon the commission's own motion, the commis-  
7 sion may conduct a contested case as provided under section 203.  
8 THE COMMISSION SHALL CREATE, AND SHALL SUPPLY UPON REQUEST, A  
9 FORM AFFIDAVIT DESIGNED TO ENABLE AN END-USER TO PROVIDE ALL  
10 INFORMATION NECESSARY TO PROMOTE EFFICIENT RESOLUTION OF  
11 COMPLAINTS ALLEGING A VIOLATION OF SECTION 505 OR 507. HEARINGS

**HB5116, As Passed House, June 21, 2000**

House Bill No. 5116

2

1 CONDUCTED UNDER THIS SECTION SHALL COMPLY WITH THE FOLLOWING  
2 REQUIREMENTS:

3 (A) HEARINGS SHALL BE CONDUCTED IN A MANNER AS TO OPTIMIZE  
4 EXPEDIENCY, CONVENIENCE, AND THE ABILITY OF END-USERS TO BRING  
5 AND PROSECUTE, WITHOUT THE ASSISTANCE OF COUNSEL, COMPLAINTS  
6 ALLEGING VIOLATIONS OF SECTION 505 OR 507, WHILE PRESERVING THE  
7 RIGHTS OF THE PARTIES.

8 (B) IF POSSIBLE, THE COMMISSION SHALL HOLD THE HEARING AT A  
9 LOCATION NEAR THE END-USER'S RESIDENCE OR PLACE OF BUSINESS.

10 (C) IF THE COMPLAINANT HAS SUBMITTED AN AFFIDAVIT, ON THE  
11 FORM SUPPLIED BY THE COMMISSION OR OTHERWISE, ALLEGING FACTS SUFFICIENT TO SUPPORT A FINDING OF A VIOLATION OF SECTION 505 OR  
12 507, THE RESPONDENT SHALL HAVE THE BURDEN OF PROVING THAT NO VIOLATION HAS OCCURRED.

15 (2) If the commission finds that a person has violated  
16 section 505 OR 507 or an order issued under section 505 OR 507,  
17 the commission shall order remedies and penalties to protect and  
18 make whole end-users and other persons who have suffered damages  
19 as a result of the violation, including, but not limited to, 1 or  
20 more of the following:

21 (a) Order the person to pay a fine for the first offense of  
22 not less than ~~\$10,000.00~~ \$20,000.00 or more than ~~\$20,000.00~~  
23 \$30,000.00. For a second and any subsequent offense, the commission shall order the person to pay a fine of not less than  
24 ~~\$25,000.00~~ \$30,000.00 or more than ~~\$40,000.00~~ \$50,000.00. If  
25 the commission finds that the second or any of the subsequent  
26 offenses were knowingly made in violation of section 505 OR 507,

1 the commission shall order the person to pay a fine of not more  
2 than ~~-\$50,000.00~~ \$70,000.00. Each switch made in violation of  
3 section 505 OR SERVICE ADDED IN VIOLATION OF 507 shall be a sepa-  
4 rate offense under this subdivision.

5 (b) Order an unauthorized provider to refund to the end-user  
6 any amount greater than the end-user would have paid to an autho-  
7 rized provider.

8 (C) ORDER A PORTION BETWEEN 10% TO 50% OF THE FINE ASSESSED  
9 UNDER SUBDIVISION (A) BE PAID DIRECTLY TO THE CUSTOMER WHO SUF-  
10 FERED THE VIOLATION OF SECTION 505 OR 507.

11 (D) ~~-(c)-~~ Order an unauthorized provider to reimburse an  
12 authorized provider an amount equal to the amount paid by the  
13 end-user that should have been paid to the authorized provider.

14 (E) ~~-(d)-~~ If the person is licensed under this act, revoke  
15 the license if the commission finds a pattern of violations of  
16 section 505 OR 507.

17 (F) ~~-(e)-~~ Issue cease and desist orders.

18 (3) Notwithstanding subsection (2), a fine shall not be  
19 imposed for a violation of section 505 OR 507 if the provider has  
20 otherwise fully complied with ~~section~~ SECTIONS 505 AND 507 and  
21 shows that the violation was an unintentional and bona fide error  
22 notwithstanding the maintenance of procedures reasonably adopted  
23 to avoid the error. Examples of a bona fide error include cleri-  
24 cal, calculation, computer malfunction, programming, or printing  
25 errors. An error in legal judgment with respect to a person's  
26 obligations under section 505 is not a bona fide error. The

**HB5116, As Passed House, June 21, 2000**

House Bill No. 5116

4

1 burden of proving that a violation was an unintentional and bona  
2 fide error is on the provider.

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