CHAPTER 714D

TELECOMMUNICATIONS SERVICE PROVIDER FRAUD

Referred to in §331.307, §364.22, §701.1

714D.1 Legislative intent.
714D.2 Definitions.
714D.3 Unfair and deceptive practices.
714D.4 Prohibition of sweepstakes boxes.
714D.5 Conditions on use of prize promotions to solicit authority to provide or change telecommunications services.
714D.6 Private action.
714D.7 Civil enforcement.

714D.1 Legislative intent.

The general assembly finds that customers of telephone services have been subjected to fraud in the sale and advertisement of telephone long distance and local service, as well as other services related to residential and business telephone service. The general assembly further finds that companies acting in a lawful manner have lost customers to companies that obtain customers through fraud and deception.

It is the intent of the general assembly to protect telephone service subscribers from fraud and to provide statutory remedies for the victims of fraud in the sale of telecommunications service. It is the intent of the general assembly to provide the attorney general with additional remedies to address the issue of fraud in the sale of telecommunications service. It is further the intent of the general assembly that this chapter does not limit the rights or remedies that are otherwise available to a consumer or the attorney general under any other law.

99 Acts, ch 16, §2

714D.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Advertisement"* means the same as defined in section 714.16, subsection 1.
2. *"Consumer"* means a person who is not a telecommunications service provider and who uses telecommunications services.
3. *"Deception"* means the same as defined in section 714.16, subsection 1.
4. *"Person"* means the same as defined in section 714.16, subsection 1.
5. *"Sweepstakes box"* means the box or receptacle into which a person may place an entry form or document used to enter a sweepstakes, contest, or drawing of any description, and promotional materials attached to such entry form or document.
6. *"Telecommunications Act"* means 47 U.S.C. §258, a portion of the federal Telecommunications Act of 1996, relating to changes in telephone service, and including regulations adopted pursuant to that section.
7. *"Telecommunications service"* means local exchange or long distance telephone service, and any additional service or merchandise for which any charge or assessment appears on a billing statement directed to a person by a provider of local exchange or long distance telephone service, but does not include commercial mobile radio service or charges or assessments imposed on consumers of local exchange or long distance telephone service or on such additional service or merchandise by governmental entities.
8. *"Telecommunications service provider"* means a person who advertises, sells, leases, or provides telecommunications services to another person.
9. *"Unfair practice"* means the same as defined in section 714.16, subsection 1, and also means any failure of a person to comply with the Telecommunications Act or with any statute or rule enforced by the utilities board within the utilities division of the department of commerce relating to a telecommunications service selection or change.

99 Acts, ch 16, §3

714D.3 Unfair and deceptive practices.

The act, use, or employment by a person of deception or an unfair practice in connection with the lease, sale, or advertisement of a telecommunications service or the solicitation of

authority to provide or execute a change of a telecommunications service is an unlawful practice.

99 Acts, ch 16, §4

714D.4 Prohibition of sweepstakes boxes.

The use of a sweepstakes box by a person to solicit authority to provide or execute a change of a consumer's telecommunications service is an unlawful practice.

99 Acts, ch 16, §5

714D.5 Conditions on use of prize promotions to solicit authority to provide or change telecommunications services.

1. It is an unlawful practice for a person to use a form or document which is to be used or intended to be used by another person to enter a sweepstakes, contest, or drawing of any description as written authority to provide or execute a change of a consumer's telecommunications service.

2. It is an unlawful practice for a person to solicit the lease or sale of or to solicit the authority to provide or execute a change of a telecommunications service to another person through or in conjunction with a sweepstakes, contest, or drawing without clearly, conspicuously, and fully disclosing in all direct mail solicitations to the other person the fact that the sweepstakes, contest, or drawing is intended to solicit authority to provide or execute a change of a telecommunications service. The disclosure required shall include, at a minimum, all of the following:

a. A statement that an acceptance or change of telecommunications service is not required to enter the sweepstakes, contest, or drawing.

b. An alternative means by which a person may enter the sweepstakes, contest, or drawing without accepting or authorizing a change in a telecommunications service.

c. The name and telephone number of the entity soliciting the person to accept or to authorize a change of telecommunications service through the use of or in conjunction with the sweepstakes, contest, or drawing.

d. A brief description of the nature of the telecommunications service for which authorization is sought through the use of or in conjunction with the sweepstakes, contest, or drawing.

99 Acts, ch 16, §6

714D.6 Private action.

1. In addition to any other remedy, a consumer may bring an action against a person who commits an unlawful practice under this chapter to recover from the person all of the following:

a. The amount of any moneys or property acquired by the person from the consumer by means of an unlawful practice under this section, or two hundred dollars, whichever is greater.

b. If a court finds that the consumer prevails in the action and that the unlawful practice was an intentional violation of this chapter, five hundred dollars or twice the amount of the consumer's actual damages, whichever is greater.

c. Costs and reasonable attorney fees.

2. A cause of action under this section shall not apply unless, prior to filing the action, the consumer has submitted a complaint to the utilities board within the utilities division of the department of commerce, the utilities board has failed to resolve the complaint to the consumer's satisfaction within one hundred twenty days of the date the complaint was submitted, and the consumer dismisses the complaint before the utilities board. The requirement that a consumer complaint be submitted to the utilities board and resolved by the utilities board to the consumer's satisfaction within one hundred twenty days of filing before the consumer may file an action pursuant to this section shall not apply to an action by the attorney general to recover moneys for the consumer pursuant to section 714D.7 or any other law. A finding by the utilities board that a respondent has complied with rules governing carrier selection procedures adopted by the utilities board shall be an

affirmative defense to any claim brought under this section or section 476.103 or 714D.7 that an unauthorized change in service has occurred.

99 Acts, ch 16, §7
Referred to in **§714D.7**

714D.7 Civil enforcement.

1. A violation of this chapter or a rule adopted pursuant to this chapter is a violation of section 714.16, subsection 2, paragraph *"a"*. The remedies and penalties provided by section 714.16, including but not limited to injunctive relief and civil penalties, apply to violations of this chapter.

2. In seeking reimbursement pursuant to section 714.16, subsection 7, from a person who has committed an unlawful practice under this chapter, the attorney general may seek an order from the court that the person pay to the attorney general on behalf of consumers the amounts for which the person would be liable under section 714D.6 for each consumer who has a cause of action pursuant to section 714D.6. Section 714.16, as it relates to consumer reimbursement, applies to amounts recovered by the attorney general as reimbursement under this chapter. However, a consumer who is awarded monetary damages pursuant to section 714D.6 is not eligible for monetary relief under this section for the same unlawful practice.

3. The remedies provided pursuant to this chapter are in addition to any other remedies provided to the state or to a person under other law.

4. The attorney general shall not file a civil enforcement action under this chapter or under section 714.16 against a person for an act which is the subject of an administrative proceeding to impose a civil penalty which has been initiated against the person by the utilities board within the utilities division of the department of commerce. This subsection shall not be construed to limit the authority of the attorney general to file a civil enforcement or other enforcement action against a person for violating a prior agreement entered into by the person with the attorney general or a court order obtained by the attorney general against the person. This subsection shall not be construed to limit the authority of the attorney general to file a civil enforcement or other enforcement action against the person for acts which are not the subject of an administrative proceeding which has been initiated against the person by the utilities board.

99 Acts, ch 16, §8
Referred to in **§476.103**, **§714D.6**