

**SENATE BILL NO. 2207**

Introduced by

Senators Thompson, Kelsh, Mutzenberger

Representatives S. Kelsh, Mueller, Solberg

1 A BILL for an Act to create and enact section 49-21-10.3 of the North Dakota Century Code,  
2 relating to an unauthorized addition or change in telecommunications services; to amend and  
3 reenact section 49-02-01.1 of the North Dakota Century Code, relating to the jurisdiction of the  
4 public service commission; and to provide a penalty.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 49-02-01.1 of the 1997 Supplement to the North  
7 Dakota Century Code is amended and reenacted as follows:

8 **49-02-01.1. Jurisdiction of commission limited as to certain utilities.** Nothing in  
9 this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates,  
10 contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of  
11 any public utility owned and operated by the state or by any city, county, township, or other  
12 political subdivision of the state or any public utility, that is not operated for profit, that is  
13 operated as a nonprofit, cooperative, or mutual telecommunications company or is a  
14 telecommunications company having fewer than eight thousand local exchange subscribers.  
15 However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual  
16 telecommunications company or has fewer than eight thousand local exchange subscribers is  
17 subject to sections 49-21-01.4 ~~and~~ 49-21-08, and 49-21-10.3; and is subject to subsection 6 of  
18 section 49-02-02 and sections 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07, 49-21-09, and  
19 49-21-10; regarding rates, terms, and conditions of access services or connection between  
20 facilities and transfer of telecommunications between two or more telecommunications  
21 companies. Nothing in this section limits the authority of the commission under chapter 49-03.1  
22 or sections 49-04-05 and 49-04-06.

23 **SECTION 2.** Section 49-21-10.3 of the North Dakota Century Code is created and  
24 enacted as follows:

1           **49-21-10.3. Slamming and cramming - Unauthorized change in**  
2 **telecommunications service - Remedies and penalties.**

- 3           1. A telecommunications service provider may not make a change in or direct another  
4 telecommunications service provider to make a change in a provider of a  
5 telecommunications service without a completed letter of agency. A  
6 telecommunications service provider may not add or direct another  
7 telecommunications service provider to add a service without a completed letter of  
8 agency.
- 9           2. The letter of agency must be a document with the sole purpose of authorizing a  
10 telecommunications service provider change or the addition of a service. The letter  
11 of agency may not be combined with inducements of any kind on the same  
12 document. The letter of agency must be printed with a print of sufficient size to be  
13 clearly legible. The letter of agency must contain clear and unambiguous language  
14 that confirms the subscriber's billing name and address; the decision to change the  
15 telecommunications service provider from the current provider to the prospective  
16 provider or add a service; and the terms, conditions, and nature of the service to be  
17 provided to the subscriber. The letter of agency must be signed and dated by the  
18 subscriber requesting the telecommunications service provider change or the  
19 addition in service.
- 20           3. The provider of the changed or added telecommunications service shall insert a  
21 conspicuous notice on or with the subscriber's first bill for which the change or  
22 addition is effective or shall send a separate notice within sixty days informing the  
23 subscriber of a change or addition.
- 24           4. A subscriber, and the commission on its own motion, may complain concerning  
25 any violation of this section or rule adopted by the commission to implement this  
26 section. The commission shall design a document for insertion in the telephone bill  
27 of every telephone subscriber in this state which summarizes this section. A  
28 person responsible for telecommunications billing shall include the document with  
29 billing statements upon request by the commission. Every telecommunications  
30 service provider doing business in this state shall be provided the document by  
31 personal delivery or certified mail.

- 1           5. In addition to any other penalties, the commission may order a telecommunications  
2           service provider who has violated this section or any rule adopted to implement this  
3           section to pay a civil penalty of up to fifteen thousand dollars. For an unauthorized  
4           change of provider under this section, the commission shall order the  
5           telecommunications service provider to pay all charges associated with returning  
6           the subscriber to the subscriber's original telecommunications service provider; to  
7           pay the telecommunications service provider from which the subscriber was  
8           changed the amount paid by the subscriber which would have been paid to the  
9           provider but for the unauthorized change; to return to the subscriber any amount  
10          paid by the subscriber in excess of the charges that would have been imposed for  
11          identical service by the telecommunications service provider from which the  
12          subscriber was changed but for the unauthorized change; and to provide all billing  
13          records to the original telecommunications service provider from which the  
14          subscriber was changed. For an unauthorized addition of service under this  
15          section, the commission shall order the telecommunications service provider to pay  
16          for all charges associated with removing the service and all changes for the  
17          service. The attorney general may enforce a commission order for the benefit of  
18          any subscriber through a civil action. Damages to the subscriber and costs of  
19          enforcement are recoverable.
- 20          6. The commission shall order a telecommunications service provider to take  
21          corrective action as necessary if the commission finds that the provider has  
22          repeatedly violated this section. The commission shall prohibit or limit a  
23          telecommunications service provider from providing service in this state if the  
24          commission finds that the provider has repeatedly and willfully violated this section.
- 25          7. Within twenty days of the receipt of the notice of complaint by the  
26          telecommunications service provider who initiated the change or addition, the  
27          provider shall send by registered mail a copy of the letter of agency for the  
28          subscriber named in a complaint to the commission. If the telecommunications  
29          service provider does not provide the letter of agency within the permitted time, a  
30          conclusive presumption is created that the telecommunications service provider  
31          has violated this section.