

HOUSE BILL NO. 1169

Introduced by

Natural Resources Committee

(At the request of the Public Service Commission)

1 A BILL for an Act to create and enact a new section to chapter 49-07 and a new section to
2 chapter 49-21 of the North Dakota Century Code, relating to unauthorized telecommunications
3 service; to amend and reenact section 49-02-01.1 of the North Dakota Century Code, relating to
4 jurisdiction of the public service commission; and to provide a penalty.

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

6 **SECTION 1.** A new section to chapter 49-07 of the North Dakota Century Code is
7 created and enacted as follows:

8 **Violation of prohibition against unauthorized initiation of or change in**
9 **telecommunications service - Penalties.** A telecommunications company that violates
10 section 2 of this Act, or any rule or order issued by the commission implementing section 2 of
11 this Act, is subject to a civil penalty to be imposed by the commission in an amount not less
12 than ten thousand dollars nor more than twenty thousand dollars for the first offense and not
13 less than twenty-five thousand dollars nor more than forty thousand dollars for a subsequent
14 offense. Each change or initiation of a telecommunication service constitutes a separate
15 offense. Imposition of a penalty under this section does not preclude imposition of a penalty
16 under chapter 51-15.

17 **SECTION 2.** A new section to chapter 49-21 of the North Dakota Century Code is
18 created and enacted as follows:

19 **Unauthorized telecommunications service.**

20 1. Unauthorized service initiation and change prohibited. A telecommunications
21 company may not submit an order to initiate or change the provision of a
22 telecommunications service or change a customer's local or long-distance carrier
23 without express authorization from the customer.

- 1 2. Authorization. Customer authorization for initiation or change of service or change
2 of carrier may be obtained only as provided in this section. An authorization is
3 invalid if the telecommunications company, its agent, or its verification company
4 used any fraudulent, deceptive, or unconscionable marketing or sales practice
5 including negative options, or otherwise failed to meet other telemarketing
6 standards or practices. Authorization may be obtained by:
- 7 a. Separate written agreement or letter of agency of the customer containing
8 customer-specific information. A written agreement or letter of agency
9 combined with a sweepstakes, drawing or contest entry, lottery ticket, coupon,
10 or other promotional material does not constitute a separate written
11 agreement or letter of agency. Endorsement of a check may constitute a
12 separate written agreement or letter of agency if both the face of the check
13 and the endorsement form clearly and conspicuously disclose that
14 endorsement of the check constitutes express written agreement to initiate or
15 change service or change service providers. A telecommunications company
16 that submits an order to initiate or change service or change a provider shall
17 retain the written agreement or letter of agency for two years.
- 18 b. Oral agreement of the customer if the customer initiates the call to obtain or
19 change service and the company provides notification under subsection 3.
- 20 c. Oral agreement of the customer if the telecommunications company or its
21 agent initiates the call to the customer and:
- 22 (1) The telecommunication company keeps an audiotape record of the
23 entire conversation for two years; and
- 24 (2) An independent third party verifies the authorization and keeps an
25 audiotape of the entire verification for two years.
- 26 3. Notice of new or changed service. A telecommunications company shall provide
27 specific, clear, written notification to the customer of each initiation of or change in
28 service within ten days of the authorization. The notice must include the terms and
29 conditions of the service, the rates and charges for the service, and a clear
30 statement advising the customer of the right and procedure to cancel the new
31 service or reverse the change in service or carrier.

- 1 4. Billing disclosures. The first bill for telecommunications services issued after the
2 effective date of an initiation of or change in service or provider must contain
3 conspicuous notice of the new or changed service or the change in provider, and
4 the effective date of each. The bill must also contain the name, address, and
5 toll-free telephone number of each carrier identified on the bill, with information on
6 how the customer can cancel the new service or reverse the change in service or
7 carrier if the customer believes the initiation or change was not authorized.
- 8 5. Automatic credit. A customer may notify the telecommunications company
9 providing the new or changed service or the company billing for the company
10 providing the new or changed service of an unauthorized initiation or change in
11 service or change of provider. If the customer gives this notice within sixty days
12 after issuance of the notice required in subsection 3 or the billing disclosure
13 required in subsection 4, whichever is earlier, the customer is entitled to full credit
14 for all charges related to the unauthorized service or change in provider from the
15 date of unauthorized initiation or change in service or provider to the date the
16 unauthorized service or provider change is stopped or reversed. The right of the
17 customer to full credit is not affected by any delay in billing. The customer is not
18 liable for any charges imposed to reverse the unauthorized initiation or change in
19 service or change in provider.
- 20 6. Competitor actions. A telecommunications company that violates this section shall
21 pay the previous service provider all recurring and nonrecurring costs and charges
22 incurred by the previous service provider, the value of any premiums or bonuses
23 restored to the customer that the customer would have earned from the previous
24 provider during the period of violation, plus the amount of revenue the previous
25 service provider would have received if the customer's service had been provided
26 by the previous service provider during the period of violation.
- 27 7. Reimbursement to local exchange company. A telecommunications company that
28 violates this section shall pay the customer's local exchange company for any
29 costs incurred to execute the unauthorized initiation or change in service or change
30 in provider, together with any costs incurred to investigate the unauthorized
31 initiation or change and reinstate the customer to the previous service or provider.

- 1 8. Cease and desist orders. If the commission finds an emergency exists that
2 requires ex parte action, the commission may issue a cease and desist order
3 without prior notice against a telecommunications company that the commission
4 has reason to believe is in violation of this section. The cease and desist order
5 must be:
- 6 a. Directed against the telecommunications company's marketing of
7 telecommunications service, not the company's provision of service to current
8 customers;
- 9 b. Accompanied by service on the telecommunications company of a
10 commission order opening an investigation or a formal complaint regarding
11 the company's compliance with this section; and
- 12 c. Accompanied by service on the telecommunications company of a notice of
13 opportunity to be heard on the cease and desist order within fifteen days of
14 issuance of the cease and desist order.
- 15 9. Consumer fraud violation. A telecommunications company that violates this
16 section is deemed to have committed an unlawful practice in violation of section
17 51-15-02 and is subject to all the provisions, procedures, and penalties of chapter
18 51-15.

19 **SECTION 3. AMENDMENT.** Section 49-02-01.1 of the 1997 Supplement to the North
20 Dakota Century Code is amended and reenacted as follows:

21 **49-02-01.1. Jurisdiction of commission limited as to certain utilities.** Nothing in
22 this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates,
23 contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of
24 any public utility owned and operated by the state or by any city, county, township, or other
25 political subdivision of the state or any public utility, that is not operated for profit, that is
26 operated as a nonprofit, cooperative, or mutual telecommunications company or is a
27 telecommunications company having fewer than eight thousand local exchange subscribers.
28 However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual
29 telecommunications company or has fewer than eight thousand local exchange subscribers is
30 subject to sections 49-21-01.4 ~~and~~, 49-21-08, and sections 1 and 2 of this Act and is subject to
31 subsection 6 of section 49-02-02 and sections 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07,

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- 1 49-21-09, and 49-21-10, regarding rates, terms, and conditions of access services or
- 2 connection between facilities and transfer of telecommunications between two or more
- 3 telecommunications companies. Nothing in this section limits the authority of the commission
- 4 under chapter 49-03.1 or sections 49-04-05 and 49-04-06.