

# PUBLIC UTILITIES

## CHAPTER 413

### SENATE BILL NO. 2359

(Senators Robinson, Cook, Lyson)  
(Representatives Jensen, R. Kelsch, Mahoney)

## RAILWAY CRITICAL INCIDENT STRESS DEBRIEFING POLICY

AN ACT to provide for a critical incident stress debriefing policy; and to provide an expiration date.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. Critical incident stress debriefing policy.** Each railroad corporation shall develop a written critical incident stress debriefing policy and shall provide a copy of the policy to each employee.

**SECTION 2. EXPIRATION DATE.** This Act is effective through July 31, 2003, and after that date is ineffective.

Approved April 12, 2001  
Filed April 12, 2001

## CHAPTER 414

### HOUSE BILL NO. 1182

(Education Committee)

(At the request of the State Board of Higher Education)

## TELECOMMUNICATIONS SERVICE DEFINITION

AN ACT to amend and reenact section 49-21-01.1 of the North Dakota Century Code, relating to the definition of telecommunications service for purposes of telecommunications regulation.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 49-21-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**49-21-01.1. Inapplicability of provisions of chapter.** Telecommunications service does not include and the provisions of this title do not apply to:

1. The one-way transmission of radio or television signals for broadcast purposes, including the one-way transmission of video programming or other programming service by a cable system as well as subscriber interaction, if any, which is required for the selection of such video programming or other programming service.
2. A hospital, hotel, motel, or similar place of temporary accommodation owning or operating message switching or billing equipment solely for the purpose of reselling telecommunications services to its patients or guests.
3. Telegraph service.
4. Except as provided in section 49-21-01.5, home, business, and coinless or coin-operated public or semipublic telephone terminal equipment and the use of such equipment.
5. The lease of telecommunications equipment by a telecommunications company from a person whose business is the leasing or sale of such equipment.
6. Billing and collection services.
7. Inside wire and premise cable installation and maintenance.
8. Directory services which are not essential, such as "yellow pages" advertising and boldface or color listings in "white pages".
9. Private line transport service.
10. Services or facilities provided by a system or institution of higher education to:

- a. Institution employees or students at institution facilities or housing owned or leased by the institution;
- b. Affiliated organizations, including alumni operations and research foundations, formed for the purpose of supporting the institution or leased by the institution and offering products and services intended primarily for the benefit of institution employees, students, or guests;
- c. Other persons or entities located on property owned or leased by the institution and offering products and services intended primarily for the benefit of institution employees, students, or guests;
- d. Casual users using the institution's facilities for conferences, seminars and other similar special events, and broadcasters of athletic events;
- e. Occupants of technology parks, or business incubators receiving secretarial or business start-up support in facilities owned or leased by the institution during a business start-up phase for a term not to exceed four years or until August 1, 2005, whichever is later; and
- f. Educational, governmental and nonprofit users of system or institution interactive video conferencing site facilities and associated network services.

Institutions may not unreasonably restrict access by a telecommunications company to institution facilities for the purpose of furnishing telecommunications services to residents in institution housing or to other persons or entities leasing institution facilities, except institutions may limit access to residence halls. Institutions may require reasonable payment for and adopt reasonable restrictions on the use of institution telecommunications infrastructure to avoid service interruptions or increased maintenance or administrative burdens.

Approved April 13, 2001  
Filed April 13, 2001

## CHAPTER 415

### HOUSE BILL NO. 1090

(Industry, Business and Labor Committee)  
(At the request of the Public Service Commission)

### TELECOMMUNICATIONS COMPANY FEES

AN ACT to amend and reenact section 49-21-01.2 of the North Dakota Century Code, relating to filing fees and exemption from rate of return regulation for the provision of telecommunications service.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 49-21-01.2 of the North Dakota Century Code is amended and reenacted as follows:

**49-21-01.2. Exemption - Rate regulation.** Except as provided for in this chapter and sections 49-02-01.1, 49-02-21, 49-02-22, and 49-04-02.1, telecommunications companies and all telecommunications services are exempt from the provisions of chapters 49-02, 49-04, 49-05, and 49-06. Telecommunications companies and services are not subject to rate or rate of return regulation. Any telecommunications company may elect not to be subject to the provisions of this section and section 49-21-01.3, and to be subject to rate and rate of return regulation, by filing an election with the commission in writing. For telecommunications companies with over fifty thousand subscribers, the election not to be exempt from rate and rate of return regulation is a one-time, irrevocable election. Notwithstanding an election filed under this section, a telecommunications company is not obligated to pay any fee for filing a price schedule or tariff.

Approved March 12, 2001  
Filed March 12, 2001

## CHAPTER 416

### HOUSE BILL NO. 1093

(Industry, Business and Labor Committee)  
(At the request of the Public Service Commission)

## TELECOMMUNICATIONS UNAUTHORIZED CHARGES

AN ACT to amend and reenact subsections 1 and 3 of section 49-21-02.4 of the North Dakota Century Code, relating to unauthorized charges in telecommunications service and providers.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsections 1 and 3 of section 49-21-02.4 of the North Dakota Century Code are amended and reenacted as follows:

1. A telecommunications company shall comply with the provision of title 47, Code of Federal Regulations, part 64, subpart k, in effect on January 1, 2001, regarding changes in a subscriber's selection of a provider of telecommunications service. The commission shall enforce the provisions of title 47, Code of Federal Regulations, part 64, subpart k, in effect on January 1, 2001.
3. If the commission finds an emergency exists that requires ex parte action, the commission may issue a cease and desist order without prior notice against a telecommunications company that the commission has reason to believe is in violation of this section or title 47, Code of Federal Regulations, part 64, subpart k, in effect on January 1, 2001. The cease and desist order must be:
  - a. Directed against the telecommunications company's marketing of telecommunications service, not the company's provision of service to current customers;
  - b. Accompanied by service on the telecommunications company of a commission order opening an investigation or a formal complaint regarding the company's compliance with this section; and
  - c. Accompanied by service on the telecommunications company of a notice of opportunity to be heard on the cease and desist order within fifteen days of issuance of the cease and desist order.

Approved March 14, 2001  
Filed March 14, 2001

## CHAPTER 417

### SENATE BILL NO. 2227 (Senators Heitkamp, Traynor) (Representative Carlson)

## UNDERGROUND FACILITY DAMAGE

AN ACT to amend and reenact section 49-23-06 of the North Dakota Century Code, relating to damages to underground facilities.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 49-23-06 of the North Dakota Century Code is amended and reenacted as follows:

#### **49-23-06. Damage to facilities - Penalty.**

1. a. If any damage occurs to an underground facility or its protective covering, the excavator shall notify the operator as soon as reasonably possible. When the operator receives a damage notice, the operator shall dispatch, as soon as reasonably possible, personnel to the damage area to investigate. If the damage endangers life, health, or property, the excavator responsible for the work shall take immediate action to protect the public and property and to minimize the hazard until arrival of the operator's personnel or until emergency responders have arrived and taken charge of the damaged area.
- b. An excavator shall delay backfilling in the immediate area of the damaged underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise. The repair of damage must be performed by the operator or by qualified personnel authorized by the operator.
- c. An excavator who knowingly damages an underground facility and who does not notify the operator as soon as reasonably possible or who backfills in violation of subdivision b is guilty of a class A misdemeanor.
2. a. If an excavator fails to comply with this chapter or damages an underground facility, the excavator is liable for all damages caused by the failure to comply with this chapter and for all damages to the facilities and must reimburse the operator for the cost of repair and restoration, loss of product, and interruption of service occurring because of the damage or injury to the facilities, together with reasonable costs and expenses of suit, including reasonable attorney's fees.
- b. Reimbursement to the operator under this subsection is not required if the damage to the underground facility was caused by the sole negligence of the operator or the operator failed to comply with sections 49-23-03 and 49-23-04.

3. It is prima facie evidence of the excavator's negligence in a claim for relief if damage to the underground facilities of an operator resulted from excavation and the excavator failed to give an excavation notice under section 49-23-04 or provide support as required by section 49-23-05.

Approved March 22, 2001

Filed March 22, 2001