Fifty-sixth Legislative Assembly of North Dakota

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. <u>A telecommunications company that violates</u>

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 <u>under chapter 51-15.</u>

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

19 <u>Unauthorized telecommunications service.</u>

20 <u>1.</u> <u>Unauthorized service initiation and change prohibited. A telecommunications</u>

- 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	<u>2.</u>	<u>Auth</u>	norizati	on. 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		<u>a.</u>	<u>Sepa</u>	rate written agreement or letter of agency of the customer containing			
8			<u>custo</u>	mer-specific information. A written agreement or letter of agency			
9			<u>comb</u>	ined with a sweepstakes, drawing or contest entry, lottery ticket, coupon,			
10			<u>or oth</u>	er promotional material does not constitute a separate written			
11			agree	ment or letter of agency. Endorsement of a check may constitute a			
12			<u>separ</u>	ate written agreement or letter of agency if both the face of the check			
13			and the	ne endorsement form clearly and conspicuously disclose that			
14			<u>endo</u>	sement of the check constitutes express written agreement to initiate or			
15			<u>chan</u> g	ge service or change service providers. A telecommunications company			
16			<u>that s</u>	ubmits an order to initiate or change service or change a provider shall			
17			<u>retain</u>	the written agreement or letter of agency for two years.			
18		<u>b.</u>	<u>Oral a</u>	agreement of the customer if the customer initiates the call to obtain or			
19			<u>chan</u> g	ge service and the company provides notification under subsection 3.			
20		<u>C.</u>	<u>Oral a</u>	agreement of the customer if the telecommunications company or its			
21			<u>agent</u>	initiates the call to the customer and:			
22			<u>(1)</u>	The telecommunication company keeps an audiotape record of the			
23				entire conversation for two years; and			
24			<u>(2)</u>	An independent third party verifies the authorization and keeps an			
25				audiotape of the entire verification for two years.			
26	<u>3.</u>	Noti	ce of r	ew 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	<u>4.</u>	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	<u>5.</u>	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	<u>6.</u>	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	<u>7.</u>	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.

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1	<u>8.</u>	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	<u>9.</u>	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		<u>51-15.</u>			
19	SEC	CTION 3. AMENDMENT. Section 49-02-01.1 of the 1997 Supplement to the North			
20	Dakota Cer	ntury Code is amended and reenacted as follows:			
21	49-0	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,

- 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.