

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

400C0867

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB238** - 2/16/99

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.

Introduced by: The Committee on State Affairs at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to authorize the Public Utilities Commission to regulate
2 certain telecommunications services.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The telecommunications company of any subscriber may not be changed without the
7 telecommunications service subscriber's authorization. The telecommunications service
8 subscriber's authorization shall be evidenced either by a written authorization signed by the
9 subscriber or by the use of an independent third-party verification company which complies with
10 the provisions of sections 2 and 3 of this Act, or by any other means authorized by the
11 commission. Products or services may not be listed on a subscriber's bill unless authorized by the
12 subscriber. The commission may promulgate rules pursuant to chapter 1-26 concerning
13 procedures, requirements, and standards for changing a subscriber's telecommunications
14 company and for listing products and services on a subscriber's bill.

15 Section 2. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
16 follows:

1 If an independent third-party verification company obtains a subscriber's oral confirmation
2 regarding a change of a designated telecommunications company for interexchange or local
3 exchange telecommunications service, the third-party verification shall include:

- 4 (1) A statement that the purpose of the call is to verify the subscriber's intent to change
5 to the newly requested telecommunications company. The newly requested
6 interexchange or local telecommunications company shall be clearly identified to the
7 subscriber. Reference to use of another telecommunications company's network or
8 facilities, if stated, shall be secondary in nature to the prominent identification of the
9 telecommunications company which will be providing service and setting the rates for
10 the subscriber's service;
- 11 (2) Confirmation that the person whose authorization for a telecommunications company
12 change is being verified is the subscriber on the account or a person authorized by the
13 subscriber to make decisions regarding the telecommunications account on behalf of
14 the subscriber, whether that subscriber is an individual person or a business;
- 15 (3) Verification data unique to the subscriber such as the subscriber's date of birth; and
- 16 (4) The name and toll-free telephone number of the newly requested telecommunications
17 company.

18 The third-party verification company shall electronically record the telephone call that
19 confirms the subscriber's change of a designated telecommunications company. The electronic
20 recording shall include the complete statement of the service being changed and the subscriber's
21 complete response. The electronic recording shall be retained by the third-party verification
22 company for two years.

23 Section 3. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
24 follows:

25 The third-party verification company shall meet each of the following criteria:

- 1 (1) Be independent of the telecommunications company that seeks to provide the
2 subscriber's new service;
- 3 (2) Not be managed, controlled, or directed or owned wholly or in part, by the
4 telecommunications company that seeks to provide the subscriber's new service;
- 5 (3) Operate from facilities physically separate from those of the telecommunications
6 company that seeks to provide the subscriber's new service; and
- 7 (4) Not derive commissions or compensation based upon the number of sales confirmed.

8 Section 4. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 A telecommunications company selling more than one type of telecommunications service
11 must obtain separate authorization to change a telecommunications company from the subscriber
12 for each service sold, although the authorizations may be made within the same solicitation. Each
13 authorization must be verified separately from any other authorizations obtained in the same
14 solicitation.

15 Section 5. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 A subscriber is not liable for any charges imposed by a telecommunications company that
18 initiates a telecommunications carrier change without authorization from the subscriber or for
19 the billing of unauthorized products or services. In addition, the telecommunications company
20 that initiates the unauthorized change or the billing of unauthorized products or services shall pay
21 to the subscriber one thousand dollars.

22 Section 6. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 Any person who violates this Act or any rules promulgated pursuant to this Act is subject
25 to a civil penalty to be imposed by the commission, after notice and opportunity for hearing. The

1 commission may impose a civil fine of not more than twenty thousand dollars for each offense.
2 In determining the amount of the penalty upon finding a violation, or the amount of the
3 compromise settlement, the commission shall consider the appropriateness of the penalty to the
4 size of the business of the person charged, prior offenses and compliance history, the good faith
5 of the person charged in attempting to achieve compliance, and such other matters as justice may
6 require. All penalties collected pursuant to this section shall be deposited in the state treasury.
7 In addition to assessing a civil penalty for a violation of this Act, the commission may revoke or
8 suspend a telecommunications company's certificate of authority for repeated offenses.

9 Section 7. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 If the commission receives more than two complaints within thirty days regarding violations
12 of section 1 of this Act, the commission may require the telecommunications company
13 responsible for the violations to provide the commission with a complete list of its current
14 subscribers, including the subscribers' billing addresses. The commission may contact each
15 subscriber to determine whether any subscriber has been subject to an unauthorized change in
16 a telecommunications company or billed for unauthorized products or services. If the commission
17 finds, after notice and opportunity for hearing, that a telecommunications company has
18 committed two separate violations of section 1 of this Act within one year, the commission may
19 assess the costs of contacting subscribers to the telecommunications company.

20 Section 8. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 If an alleged violation of this Act results in a contested case proceeding or if allowed by
23 section 7 of this Act, the commission may assess the actual costs of the contested case
24 proceeding or contacting subscribers to the telecommunications company. The assessment shall
25 be limited to actual amounts expended by the commission for commission employee time, expert

1 witnesses, court reporter fees, document and exhibit preparation, and other necessary and related
2 expenses incurred by the commission. The telecommunications company may, within thirty days
3 after the assessment is mailed, file written objections with the commission stating the grounds
4 upon which it claims that the assessment is not reasonable. The commission shall within thirty
5 days of receiving such objections hold a hearing and issue an order in accordance with its
6 findings as to the proper amount to be assessed to the telecommunications company. The order
7 may be appealed pursuant to chapter 1-26.

8 Section 9. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 For the purpose of this Act, the term, subscriber, means any person who contracts with a
11 telecommunications company for telecommunications services.

12 Section 10. That § 37-30A-9 be repealed.

13 ~~37-30A-9. Notwithstanding the provisions of § 37-30A-8, no person may change the~~
14 ~~designated telecommunications company as defined in § 49-31-1(9) which is providing service~~
15 ~~to a consumer without the written confirmation in the form of a letter of agency from that~~
16 ~~consumer or confirmation by a third-party verification company. The third-party verification~~
17 ~~company shall meet each of the following criteria:~~

18 ~~(1) Be independent of the telecommunications company that seeks to provide the~~
19 ~~consumer's new service;~~

20 ~~(2) Not be directly managed, controlled, or directed, or owned wholly or in part, by the~~
21 ~~telecommunications company that seeks to provide the consumer's new service;~~

22 ~~(3) Operate from facilities physically separate from those of the telecommunications~~
23 ~~company that seeks to provide the consumer's new service; and~~

24 ~~(4) Not derive commissions or compensation based upon the number of sales confirmed.~~

25 ~~The telecommunications company that seeks to provide the consumer's new service shall~~

1 ~~connect the consumer by telephone to the third-party verification company or shall arrange for~~
2 ~~the third-party verification company to call the consumer to confirm the change. The third-party~~
3 ~~verification company shall obtain the consumer's oral confirmation regarding the change and shall~~
4 ~~record that confirmation. The record shall include the information requested by the third-party~~
5 ~~verification company and the consumer's responses. The third-party verification company shall~~
6 ~~retain that record for twelve months. The record shall be available to the Public Utilities~~
7 ~~Commission and to the consumer at no cost. No information obtained from the consumer may~~
8 ~~be used for marketing purposes. If the telecommunications company or a third-party verification~~
9 ~~company acting on its behalf fails to comply with these third-party verification provisions, the~~
10 ~~Public Utilities Commission may revoke the telecommunication company's certificate of authority~~
11 ~~and may impose a civil fine of not less than two hundred dollars nor more than one thousand~~
12 ~~dollars for each offense. It is a violation of §§ 37-30A-1 to 37-30A-17 for any person to make~~
13 ~~such an unauthorized change.~~

1 **BILL HISTORY**

2 2/1/99 First read in Senate and referred to State Affairs. S.J. 278

3 2/8/99 Scheduled for Committee hearing on this date.

4 2/8/99 Scheduled for Committee hearing on this date.

5 2/12/99 State Affairs Hog Housed.

6 2/12/99 Scheduled for Committee hearing on this date.

7 2/12/99 State Affairs Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 469