

LEGISLATIVE BILL 755

Approved by the Governor March 19, 2008

Introduced by Transportation and Telecommunications Committee: Fischer, 43, Chairperson; Aguilar, 35; Hudkins, 21; Lautenbaugh, 18; Loudon, 49; Pedersen, 39; Schimek, 27; Stuthman, 22.

FOR AN ACT relating to the Public Service Commission; to amend sections 75-111, 75-126, 75-1011, and 75-1012, Reissue Revised Statutes of Nebraska, sections 75-156, 86-127, 86-209, 86-437, and 86-465, Revised Statutes Cumulative Supplement, 2006, and section 86-459, Revised Statutes Supplement, 2007; to change provisions relating to commission powers and duties, common carrier practices, service surcharges and reports, and transfer and use of funds; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 75-111, Reissue Revised Statutes of Nebraska, is amended to read:

75-111 The commission shall investigate any and all cases of alleged neglect or violation of the laws of this state by ~~any motor carrier or regulated motor carrier as defined in section 75-302 or other common carrier subject to sections 75-101 to 75-801, doing business in this state, or by the officers, agents, or employees of such carriers, within the jurisdiction of the commission as enumerated in section 75-109.01~~ and take such action with reference to the neglect or violation as may be provided by law.

Sec. 2. Section 75-126, Reissue Revised Statutes of Nebraska, is amended to read:

75-126 (1) Except as otherwise provided in this section, no common carrier shall:

(a) Charge, demand, collect, or receive from any person a greater or lesser compensation for any services rendered than it charges, demands, collects, or receives from any other person for doing a like or contemporaneous service unless required under section 86-465;

(b) Make or give any undue or unreasonable preference or advantage to any particular person;

(c) Subject any type of traffic to any undue or unreasonable prejudice, delay, or disadvantage in any respect whatsoever;

(d) Charge or receive any greater compensation in the aggregate for the transportation of a like kind of property or passengers for a shorter than for a longer distance over the same line or route, except as the commission may prescribe in special cases to prevent manifest injuries, except that no manifest injustice shall be imposed upon any person at intermediate points. This section shall not prevent the commission from making group or emergency rates;

(e) Demand, charge, or collect, by any device whatsoever, a lesser or greater compensation for any service rendered than that filed with or prescribed by the commission; or

(f) Change any rate, schedule, or classification in any manner whatsoever before application has been made to the commission and permission granted for that purpose, except as otherwise provided in section 86-155.

(2) This section shall not prohibit any common carrier from, and a common carrier shall not be subject to any fine, penalty, or forfeiture for, performing services free or at reduced rates to:

(a) The United States, the State of Nebraska, or any governmental subdivision thereof;

(b) The employees, both present and retired, of such common carrier;

(c) Any person when the object is to provide relief in case of any disaster;

(d) Any person who transports property for charitable purposes;

(e) Ministers and others giving their entire time to religious or charitable work; or

(f) Any person who is legally blind or visually handicapped.

Sec. 3. Section 75-156, Revised Statutes Cumulative Supplement, 2006, is amended to read:

75-156 (1) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to ten thousand dollars per day against any person, motor carrier, regulated motor carrier, common carrier, contract carrier, grain dealer, or grain warehouseman

for each violation of (a) any provision of sections 75-301 to 75-390 administered by the commission or section 75-126 as such section applies to any person or carrier specified in sections 75-301 to 75-390, (b) a commission order entered pursuant to the Automatic Dialing-Announcing Devices Act, the Emergency Telephone Communications Systems Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, or the Telecommunications Relay System Act, (c) the laws of this state within the jurisdiction of the commission as enumerated in section 75-109.01, (b) any term, condition, or limitation of any certificate, ~~or~~ permit, or authority issued by the commission pursuant to sections 75-301 to 75-390, (d) the laws of this state within the jurisdiction of the commission as enumerated in section 75-109.01, or (c) any rule, regulation, or order of the commission issued under authority delegated to the commission pursuant to sections 75-301 to 75-390, ~~or~~ (e) any rule, regulation, or order of the commission issued under the authority delegated to the commission pursuant to the Grain Dealer Act or the Grain Warehouse Act, the laws of this state within the jurisdiction of the commission as enumerated in section 75-109.01.

(2) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty not less than one hundred dollars and not more than one thousand dollars against any jurisdictional utility for each violation of (a) any provision of the State Natural Gas Regulation Act, (b) any rule, regulation, order, or lawful requirement issued by the commission pursuant to the act, (c) any final judgment or decree made by any court upon appeal from any order of the commission, or (d) any term, condition, or limitation of any certificate issued by the commission issued under authority delegated to the commission pursuant to the act. The amount of the civil penalty assessed in each case shall be based on the severity of the violation charged. The commission may compromise or mitigate any penalty prior to hearing if all parties agree. In determining the amount of the penalty, the commission shall consider the appropriateness of the penalty in light of the gravity of the violation and the good faith of the violator in attempting to achieve compliance after notification of the violation is given.

(3) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to ten thousand dollars per day against any wireless carrier for each violation of the Enhanced Wireless 911 Services Act or any rule, regulation, or order of the commission issued under authority delegated to the commission pursuant to the act.

(4) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to one thousand dollars against any person for each violation of the Nebraska Uniform Standards for Modular Housing Units Act or the Uniform Standard Code for Manufactured Homes and Recreational Vehicles or any rule, regulation, or order of the commission issued under the authority delegated to the commission pursuant to either act. Each such violation shall constitute a separate violation with respect to each modular housing unit, manufactured home, or recreational vehicle, except that the maximum penalty shall not exceed one million dollars for any related series of violations occurring within one year from the date of the first violation.

(5) The civil penalty assessed under this section shall not exceed two million dollars per year for each violation except as provided in subsection (4) of this section. The amount of the civil penalty assessed in each case shall be based on the severity of the violation charged. The commission may compromise or mitigate any penalty prior to hearing if all parties agree. In determining the amount of the penalty, the commission shall consider the appropriateness of the penalty in light of the gravity of the violation and the good faith of the violator in attempting to achieve compliance after notification of the violation is given.

(6) Upon notice and hearing in accordance with this section and section 75-157, the commission may enter an order assessing a civil penalty of up to one hundred dollars against any person, firm, partnership, limited liability company, corporation, cooperative, or association for failure to file an annual report or, beginning January 1, 2004, pay the fee as required by section 75-116 and as prescribed by commission rules and regulations or for failure to register as required by section 86-125 and as prescribed by commission rules and regulations. Each day during which the violation continues after the commission has issued an order finding that a violation

has occurred constitutes a separate offense. Any party aggrieved by an order of the commission under this section may appeal. The appeal shall be in accordance with the Administrative Procedure Act.

(7) When any person or party is accused of any violation listed in this section, the commission shall notify such person or party in writing (a) setting forth the date, facts, and nature of each act or omission upon which each charge of a violation is based, (b) specifically identifying the particular statute, certificate, permit, rule, regulation, or order purportedly violated, (c) that a hearing will be held and the time, date, and place of the hearing, (d) that in addition to the civil penalty, the commission may enforce additional penalties and relief as provided by law, and (e) that upon failure to pay any civil penalty determined by the commission, the penalty may be collected by civil action in the district court of Lancaster County.

Sec. 4. Section 75-1011, Reissue Revised Statutes of Nebraska, is amended to read:

75-1011 ~~Any~~ Notwithstanding section 75-156, any private water company that violates any provision of the Water Service Regulation Act or any rule, regulation, or order of the commission shall be subject to a civil penalty of not less than fifty dollars nor more than one thousand dollars for each act of violation and for each day of violation to be recovered as provided in section 75-1012.

Sec. 5. Section 75-1012, Reissue Revised Statutes of Nebraska, is amended to read:

75-1012 (1) ~~Whenever~~ Notwithstanding section 75-156, whenever it appears that a private water company has violated, is violating, or is threatening to violate any provision of the Water Service Regulation Act or any rule, regulation, or order of the commission, the commission may institute a civil suit in the district court of Lancaster County for (a) injunctive relief to restrain the private water company from continuing the violation or threat of violation, (b) the assessment and recovery of a civil penalty as provided in section 75-1011, or (c) both injunctive relief and civil penalty.

(2) On application for injunctive relief and a finding that a private water company is violating or threatening to violate any provisions of the act or any rule, regulation, or order of the commission, the district court shall grant the injunctive relief as the facts may warrant.

(3) At the request of the commission, the county attorney shall institute and pursue a suit in the name of the state for injunctive relief or to recover the civil penalty, or both, as authorized in subsection (1) of this section.

Sec. 6. Section 86-127, Revised Statutes Cumulative Supplement, 2006, is amended to read:

86-127 (1) One of the goals of the federal Telecommunications Act of 1996, as such act existed on January 1, 2002, is to foster competition among telephone companies. Section 271 of the federal act (a) establishes specific incentives, procedures, and requirements for regional Bell operating companies to offer inter-LATA interexchange service and (b) requires the Public Service Commission to monitor the competitive performance of a regional Bell operating company and to consult with the Federal Communications Commission regarding such activities.

(2) The Nebraska Competitive Telephone Marketplace Fund is created. The Public Service Commission may accept, and the fund shall consist of, any voluntary performance payments received from a regional Bell operating company. The fund shall be used by the commission for expenses related to the monitoring of compliance with section 271 of the federal act. If money in the fund exceeds ~~one hundred~~ thirty thousand dollars, the commission shall remit such excess money to the State Treasurer for credit to the Nebraska Internet Enhancement Fund. Any money in the Nebraska Competitive Telephone Marketplace Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 7. Section 86-209, Revised Statutes Cumulative Supplement, 2006, is amended to read:

86-209 (1) ~~The~~ Notwithstanding section 75-156, the commission may, after hearing, impose an administrative penalty for a violation of the Telephone Consumer Slamming Prevention Act. The penalty for a violation shall not exceed two thousand dollars. Every violation associated with a specific access line within the state shall be considered a separate and distinct violation.

(2) The amount of an administrative penalty shall be based on:

(a) The nature, circumstances, extent, and gravity of a prohibited act;

- (b) The history of previous violations;
- (c) The amount necessary to deter future violations; and
- (d) Any efforts to correct the violation.

(3) ~~Any money collected by the commission pursuant to this section shall be remitted to the State Treasurer for credit to the permanent school fund. The commission shall remit any administrative penalty collected under this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.~~

(4) Any administrative penalty may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Sec. 8. Section 86-437, Revised Statutes Cumulative Supplement, 2006, is amended to read:

86-437 (1) The amount of service surcharges collected in one calendar quarter by a service supplier shall be remitted to the governing body no later than sixty days after the close of that calendar quarter. At the time of the remittance, the service supplier shall file a return for the remittance with the governing body in such form as the governing body and the service supplier agree upon. The service supplier shall maintain a record of the amount of service surcharges collected. The record shall be maintained for a period of one year after the date the amount was billed. A governing body may at its own expense require an annual audit of a service supplier's books and records concerning the collection and remittance of a service surcharge.

(2) On or before April 30 of each year, each service supplier shall report for the preceding calendar year to the Public Service Commission for each of its exchanges (a) whether 911 service or E-911 service is provided in that exchange, (b) the level of the service surcharge, (c) ~~the location of the public safety answering point,~~ (d) ~~whether the governing body belongs to an interlocal agreement or other agreement with another governing body and, if so, the name of the other governing body,~~ and (e) to which governing body the service surcharge is being submitted, and (d) the amount of revenue collected by the service surcharge.

(3) The commission shall compile and place the information from such reports required in subsection (2) of this section into its annual telecommunications report to the Legislature, including the availability and location of 911 service and E-911 service in the State of Nebraska.

(4) The commission shall adopt and promulgate rules and regulations necessary to carry out subsections (2) and (3) of this section.

(5) The commission may administratively fine pursuant to section 75-156 any person who violates the Emergency Telephone Communications Systems Act.

Sec. 9. Section 86-459, Revised Statutes Supplement, 2007, is amended to read:

86-459 (1) Each wireless carrier shall remit monthly to the commission the amounts collected pursuant to section 86-457 together with any forms required by the commission no later than sixty days after the last day of the month. The commission shall remit the funds to the State Treasurer for credit to the Enhanced Wireless 911 Fund.

(2) As the commission may require, each wireless carrier, except a wireless carrier whose users have no 911 service, shall report to the commission on a quarterly basis for each county in a manner prescribed by the commission the following information: (a) The number of telephone numbers or functional equivalents served; (b) the number of telephone numbers or functional equivalents from which it has collected surcharge revenue; (c) the number of wireless towers by county; and (d) the current implementation status of enhanced wireless 911 service in each county served by that wireless carrier.

(3) The wireless carrier shall maintain all records required by this section, records of the amounts collected pursuant to section 86-457, and remittance records for a period of five years after the date of remittance to the fund. The commission may require an audit of any wireless carrier's books and records concerning the collection and remittance of any amounts collected pursuant to the Enhanced Wireless 911 Services Act. The costs of any audit required by the commission shall, at the commission's discretion, be paid by the audited wireless carrier. A wireless carrier shall not be required to pay for more than one remittance audit or more than one collection audit per year, unless the commission orders subsequent audits for good cause.

(4) Each wireless carrier shall comply with all commission rules and regulations regarding enhanced wireless 911 service.

(5) Each wireless carrier shall comply with this section regardless of whether the wireless carrier receives reimbursement from the fund. Wireless carriers failing to comply with this section may be administratively fined by the commission pursuant to section 75-156.

Sec. 10. Section 86-465, Revised Statutes Cumulative Supplement, 2006, is amended to read:

86-465 (1) The commission shall, in consultation with the advisory board:

(a) Determine the costs to implement wireless automatic location identification;

(b) Determine the level of funding needed to trigger disbursements pursuant to the Enhanced Wireless 911 Services Act;

(c) Determine the percentage of the fund to be allocated to each funding purpose, including the percentage that shall be designated for funding 911 service under subdivision (2)(c) of this section;

(d) Determine how the funds distributed under subdivisions (2)(a) and (2)(c) of this section are to be allocated among the wireless carriers and the public safety answering points; and

(e) Establish a mechanism for determining the level of funding available to each public safety answering point and wireless carrier for costs determined to be eligible by the commission under subsection (2) of this section.

(2) The commission shall, in consultation with the advisory board, establish eligibility standards and criteria for fund disbursement applications and standards and criteria concerning the level of fund disbursement for each application. In establishing such criteria and standards, the following purposes may be eligible for funding:

(a) Costs incurred or to be incurred by wireless carriers to implement enhanced wireless 911 service pursuant to a service agreement with a public safety answering point or pursuant to a request for service from a public safety answering point. Such costs may include, but not be limited to, the portion of the costs for new equipment used for providing enhanced wireless 911 service, costs to lease another vendor's equipment or services to provide enhanced wireless 911 service, costs to create or maintain any data base or data base elements used solely for enhanced wireless 911 service, and other costs of establishing enhanced wireless 911 service. The portion of the costs of equipment or services used in the wireless carrier's main infrastructure resulting in revenue to the wireless carrier is not eligible for funding;

(b) Costs incurred or to be incurred by public safety answering points to implement enhanced wireless 911 service may include, but not be limited to, purchases of new equipment, costs of upgrades, modification and personnel training used solely to process the data elements of enhanced wireless 911 service, and maintenance costs and license fees for new equipment;

(c) Costs incurred or to be incurred by public safety answering points for the purchase, installation, maintenance, and operation of telecommunications equipment and telecommunications services required for the provision of enhanced wireless 911 service; and

(d) Expenses incurred by members of the advisory board while performing duties required by the act.

(3) A wireless carrier receiving funds from the Enhanced Wireless 911 Fund shall not directly assess any of the costs associated with the implementation or provision of enhanced wireless 911 service to any public safety answering point, county, or municipality without the express consent of the commission.

~~(3)~~ (4) The commission shall have any powers necessary to carry out the intent and purposes of the act.

Sec. 11. Original sections 75-111, 75-126, 75-1011, and 75-1012, Reissue Revised Statutes of Nebraska, sections 75-156, 86-127, 86-209, 86-437, and 86-465, Revised Statutes Cumulative Supplement, 2006, and section 86-459, Revised Statutes Supplement, 2007, are repealed.

Sec. 12. Since an emergency exists, this act takes effect when passed and approved according to law.