

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 645

Introduced by Brashear, 4

Read first time January 19, 2005

Committee: Transportation and Telecommunications

A BILL

1 FOR AN ACT relating to telecommunications and technology; to amend
2 section 75-156, Reissue Revised Statutes of Nebraska, and
3 sections 25-2602.01 and 86-575, Revised Statutes
4 Supplement, 2004; to prohibit political subdivisions from
5 providing certain technology-based services; to repeal
6 the original sections; and to outright repeal sections
7 86-581 to 86-592, Revised Statutes Supplement, 2004.

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

1 Section 1. Section 25-2602.01, Revised Statutes
2 Supplement, 2004, is amended to read:

3 25-2602.01. (a) A written agreement to submit any
4 existing controversy to arbitration is valid, enforceable, and
5 irrevocable except upon such grounds as exist at law or in equity
6 for the revocation of any contract.

7 (b) A provision in a written contract to submit to
8 arbitration any controversy thereafter arising between the parties
9 is valid, enforceable, and irrevocable, except upon such grounds as
10 exist at law or in equity for the revocation of any contract, if
11 the provision is entered into voluntarily and willingly.

12 (c) The Uniform Arbitration Act applies to arbitration
13 agreements between employers and employees or between their
14 respective representatives.

15 (d) Contract provisions agreed to by the parties to a
16 contract control over contrary provisions of the act other than
17 subsections (e) and (f) of this section.

18 (e) Subsections (a) and (b) of this section do not apply
19 to a claim for workers' compensation.

20 (f) Subsection (b) of this section does not apply to:

21 (1) A claim arising out of personal injury based on tort;
22 (2) A claim under the Nebraska Fair Employment Practice
23 Act;

24 (3) Any agreement between parties covered by sections
25 60-1401.01 to 60-1440; and

26 (4) Except as provided in section 44-811, any agreement
27 concerning or relating to an insurance policy other than a contract
28 between insurance companies including a reinsurance contract.

1 (g) When a conflict exists, the Uniform Arbitration Act
 2 shall not apply to the Uniform Act on Interstate Arbitration and
 3 Compromise of Death Taxes and sections 44-811, 44-4824, 54-404 to
 4 54-406, 60-2701 to 60-2709, and 70-1301 to 70-1329. ~~, and 86-588~~
 5 ~~to 86-590.~~

6 Sec. 2. Section 75-156, Reissue Revised Statutes of
 7 Nebraska, is amended to read:

8 75-156. (1) In addition to other penalties and relief
 9 provided by law, the Public Service Commission may, upon a finding
 10 that the violation is proven by clear and convincing evidence,
 11 assess a civil penalty of up to ten thousand dollars per day
 12 against any person, motor carrier, regulated motor carrier, common
 13 carrier, contract carrier, grain dealer, or grain warehouseman for
 14 each violation of (a) any provision of sections 75-301 to 75-390
 15 administered by the commission or section 75-126 as such section
 16 applies to any person or carrier specified in sections 75-301 to
 17 75-390, (b) a commission order entered pursuant to the Automatic
 18 Dialing-Announcing Devices Act, the Emergency Telephone
 19 Communications Systems Act, the Intrastate Pay-Per-Call Regulation
 20 Act, the Nebraska Telecommunications Regulation Act, the Nebraska
 21 Telecommunications Universal Service Fund Act, or the
 22 Telecommunications Relay System Act, (c) any term, condition, or
 23 limitation of any certificate or permit issued by the commission
 24 pursuant to sections 75-301 to 75-390, (d) any rule, regulation, or
 25 order of the commission issued under authority delegated to the
 26 commission pursuant to sections 75-301 to 75-390, or (e) any rule,
 27 regulation, or order of the commission issued under the authority
 28 delegated to the commission pursuant to the Grain Dealer Act or the

1 Grain Warehouse Act.

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

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

1 (4) In addition to other penalties and relief provided by
2 law, the Public Service Commission may, upon a finding that the
3 violation is proven by clear and convincing evidence, assess a
4 civil penalty of up to ten thousand dollars per day against any
5 political subdivision of the state for each violation of section 3
6 of this act or any rule, regulation, or order of the commission
7 issued under authority delegated to the commission pursuant to
8 section 3 of this act.

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

19 ~~(5)~~ (6) Upon notice and hearing in accordance with this
20 section and section 75-157, the commission may enter an order
21 assessing a civil penalty of up to one hundred dollars against any
22 person, firm, partnership, limited liability company, corporation,
23 cooperative, or association for failure to file an annual report
24 or, beginning January 1, 2004, pay the fee as required by section
25 75-116 and as prescribed by commission rules and regulations or for
26 failure to register as required by section 86-125 and as prescribed
27 by commission rules and regulations. Each day during which the
28 violation continues after the commission has issued an order

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

5 ~~(6)~~ (7) When any person or party is accused of any
6 violation listed in this section, the commission shall notify such
7 person or party in writing (a) setting forth the date, facts, and
8 nature of each act or omission upon which each charge of a
9 violation is based, (b) specifically identifying the particular
10 statute, certificate, permit, rule, regulation, or order
11 purportedly violated, (c) that a hearing will be held and the time,
12 date, and place of the hearing, (d) that in addition to the civil
13 penalty, the commission may enforce additional penalties and relief
14 as provided by law, and (e) that upon failure to pay any civil
15 penalty determined by the commission, the penalty may be collected
16 by civil action in the district court of Lancaster County.

17 Sec. 3. (1) For purposes of this section:

18 (a) Advanced telecommunications services means the
19 offering of a capability for high-speed, broadband
20 telecommunications capability at a speed or bandwidth in excess of
21 two hundred kilobits per second that enables users to originate and
22 receive high-quality voice, data, and video telecommunications
23 using any technology;

24 (b) Information services means the offering of a
25 capability for generating, acquiring, storing, transforming,
26 processing, retrieving, utilizing, or making available information
27 via telecommunications, and includes electronic publishing;

28 (c) Telecommunications services has the same meaning as

1 telecommunications defined in section 86-117; and

2 (d) Video services means the delivery of any subscription
3 video service except those described in section 70-625.

4 (2) Except as provided in sections 79-1319, 81-1120.01 to
5 81-1120.28, 85-401 to 85-418, 85-1501 to 85-1542, and 86-575, an
6 agency or political subdivision of the state shall not provide on a
7 retail, wholesale, or any other basis any advanced
8 telecommunications services, telecommunications services,
9 information services, or video services, be issued a certificate of
10 convenience and necessity as a telecommunications common carrier,
11 or be issued a permit as a telecommunications contract carrier.

12 (3) The Public Service Commission may administratively
13 fine pursuant to section 75-156 any agency or political subdivision
14 of the state that violates this section.

15 (4) The Public Service Commission shall determine the
16 standards and procedures reasonably necessary, and adopt and
17 promulgate rules and regulations reasonably required, to
18 efficiently implement this section.

19 Sec. 4. Section 86-575, Revised Statutes Supplement,
20 2004, is amended to read:

21 86-575. (1) Any agency or political subdivision of the
22 state may:

23 (a) Own dark fiber;

24 (b) Sell dark fiber pursuant to section 86-576; and

25 (c) Lease dark fiber pursuant to section 86-577.

26 (2) ~~No agency or political subdivision of the state shall~~
27 ~~provide telecommunications services for a fee, except as authorized~~
28 ~~in sections 79-1319, 81-1120.01 to 81-1120.28, 85-401 to 85-418,~~

1 ~~and 85-1501 to 85-1542, or be issued a certificate of convenience~~
2 ~~and necessity as a telecommunications common carrier or a permit as~~
3 ~~a telecommunications contract carrier.~~ Any agency or political
4 subdivision which sells or leases its dark fiber pursuant to
5 sections 86-574 to 86-578 shall not be deemed to be providing
6 telecommunications ~~services for a fee~~ services as defined in
7 section 3 of this act.

8 Sec. 5. Original sections 75-156, Reissue Revised
9 Statutes of Nebraska, and sections 25-2602.01 and 86-575, Revised
10 Statutes Supplement, 2004, are repealed.

11 Sec. 6. The following sections are outright repealed:
12 Sections 86-581 to 86-592, Revised Statutes Supplement, 2004.