

LEGISLATIVE BILL 286

Approved by the Governor March 29, 1991

Introduced by Landis, 46; Moore, 24

AN ACT relating to telecommunications; to amend sections 86-803 and 86-804, Reissue Revised Statutes of Nebraska, 1943; to change complaint procedures as prescribed; to eliminate termination dates; to require a plan for disposition of revenue resulting from tax law changes; to change the date a report is due; 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. That section 86-803, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

86-803. (1) Except as provided in sections 86-801 to 86-811, telecommunications companies shall be subject to regulation by the commission. Telecommunications companies shall not, however, be subject to any rate regulation by the commission and shall not be subject to provisions as to rates and charges prescribed in Chapter 75, articles 1 and 6. Telecommunications companies shall, instead, file rate lists for their telecommunications services which shall be effective after ten days' notice to the commission with the exception of monthly rates for basic local exchange services.

(2) Except as provided in subsection (4) of this section, monthly basic local exchange rates may be changed by a telecommunications company effective after sixty days' notice to all affected subscribers. Such notice shall include (a) the reasons for the rate increase, (b) a description of the affected service, (c) an explanation of the right of the subscriber to petition the commission for a public hearing on the rate increase, (d) a list of exchanges which are affected by the proposed rate increase, and (e) the dates, times, and places for the public informational meetings required by this section. A telecommunications company which proposes to increase its basic local exchange rate shall hold at least one public informational meeting in each commission district as established by section 5-107 in which it provides basic local exchange service prior

to the effective date of the rate increase. If the telecommunications company presently charges different rates for residential or business basic service among various exchanges, increases or decreases in basic local exchange rates need not be uniform for all exchanges until all residential basic local exchange rates are fully equalized and all business basic local exchange rates are fully equalized. Thereafter, the amount of any increase or decrease in a business basic local exchange rate or residential basic local exchange rate made pursuant to this section shall be the same for all business service subscribers or for all residential service subscribers within the local service area of the telecommunications company making such increase or decrease. For purposes of this section, local service area shall mean the total area within the state for which a basic local exchange service is provided by a telecommunications company.

(3) The commission shall review basic local exchange rates set by any telecommunications company only upon formal complaint signed by (a) five percent of all affected subscribers if the telecommunications company has up to fifty thousand access lines in service, (b) three percent of all affected subscribers if the telecommunications company has fifty thousand but not more than two hundred fifty thousand access lines in service, or (c) two percent of all affected subscribers if the telecommunications company has more than two hundred fifty thousand access lines in service. The complaint shall specifically set forth the particular rate or charge as to which review is requested, the reasons for the requested review, and the relief which the complainants desire. If a proper complaint is presented to the commission within sixty days from the date notice of the rate change was sent to affected subscribers of a telecommunications company that has up to fifty thousand access lines in service or within one hundred twenty days from the date notice of the rate change was sent to affected subscribers of a telecommunications company that has fifty thousand or more access lines in service, the commission shall accept and file the complaint and, upon proper notice, may suspend the rates and charges at issue during the pendency of the proceedings and reinstate the rates and charges previously in effect and shall hold and complete a hearing thereon within ninety days after filing to determine if the rates as proposed are fair, just, and reasonable. The commission may, within sixty days after close of the hearing, enter an order adjusting the rates

and charges at issue, except that the commission may not set any rate or charge below the actual cost of providing such service as established by the evidence received at the hearing. In such order, the commission may order a refund of amounts collected in excess of the rates and charges as approved at the hearing which may be paid as a credit against billings for future services. A telecommunications company shall not increase its rates without the approval of the commission for six months from the date the commission enters such order. If the commission fails to enter any order within sixty days after the close of the hearing, the complaint shall be deemed denied and the rates and charges shall be deemed approved for all purposes, including for purposes of appeal. For purposes of this section, actual cost shall also include a ratable portion of administrative expenses and overhead incurred by the telecommunications company in its operations and the appropriate amortization of previously deferred accounting costs. ~~This subsection shall terminate on August 31, 1991.~~

(4) A telecommunications company may at any time file an application with the commission requesting the commission to prescribe fair, just, and reasonable rates for the company or such telecommunications company may elect to proceed, if eligible, under section 75-609.01. Such proceedings shall be governed by Chapter 75, articles 1 and 6, and shall not be limited by subsection (2) of this section. Any rate so set may thereafter be adjusted as provided in subsections (1) and (2) of this section.

(5) In setting rates for interexchange services, telecommunications companies that provide such services shall continue to average their rates for all such services on a statewide basis ~~until August 31, 1991,~~ unless the commission, upon application and hearing, orders otherwise. This subsection shall not prohibit volume discounts or other discounts based on reasonable business purposes. With regard to interexchange telecommunications services, nothing in sections 86-801 to 86-811 shall preempt or affect any right, liability, cause of action, duty, or obligation arising from any law with regard to unfair business practices or anticompetitive activity.

(6) The commission shall retain quality of service regulation over the services provided by all telecommunications companies and shall investigate and resolve subscriber complaints concerning quality of telecommunications service, subscriber deposits, and

disconnection of service. If such complaint cannot be resolved informally, then, upon petition by the subscriber, the commission shall set the matter for hearing in accordance with the commission's rules and regulations for notice and hearing and may by order render its decision granting or denying in whole or in part the subscriber's petition or provide such other relief as is reasonable based on the evidence presented to the commission at the hearing. Any such order of the commission may be enforced against any telecommunications company as provided in sections 75-140 to 75-145 and may be appealed.

(7) Except as provided in subsection (4) of this section, the commission may, on its own motion, review basic local exchange rates of any telecommunications company if the company has increased such rates by more than ten percent within any consecutive twelve-month period. The commission shall hold and complete a hearing on such rates within ninety days after first giving notice of such hearing to the telecommunications company to determine if the rates as proposed are fair, just, and reasonable. The commission may, within sixty days after close of the hearing, enter an order adjusting the rates and charges at issue, except that the commission may not set any rate or charge below the actual cost of providing such service as established by the evidence received at the hearing. In such order, the commission may order a refund of amounts collected in excess of the rates and charges as approved at the hearing which may be paid as a credit against billings for future services. If the commission fails to enter any order within sixty days after the close of the hearing, the rates and charges shall be deemed approved for all purposes, including for purposes of appeal. For purposes of this subsection, actual cost shall also include a ratable portion of administrative expenses and overhead incurred by the telecommunications company in its operations and the appropriate amortization of previously deferred accounting costs.

(8) The commission may order that flat rate services shall be available whenever measured service is implemented and that for such services the price restrictions prescribed in sections 86-801 to 86-811 shall be retained. Measured service shall mean basic local exchange service, the rate for which is a combination of a flat rate access line charge plus usage charges which may be based upon number of calls, length of call, distance, and time of day.

(9) The commission shall approve the

disposition of revenue resulting from decreases in federal or state income taxes or property taxes due to a tax law change that results in a reduction in the tax liability of a telecommunications company of twenty percent or more in any taxable year. Any telecommunications company so affected shall file a plan with the commission proposing the disposition of the revenue at the same time that it files its annual report with the commission. The commission shall schedule a public hearing within thirty days of the filing of the plan or the plan shall be deemed approved.

(10) Rates being charged by telecommunications companies on January 1, 1987, shall be deemed to be the effective rates until changed or altered pursuant to sections 86-801 to 86-811.

~~(10)~~ (11) No telecommunications company may change its basic local exchange rate within ninety days after entry of a final order adjusting such rate pursuant to subsections ~~(3)~~ (4) and (7) of this section.

~~(11)~~ (12) Any order of the commission entered pursuant to authority granted in sections 86-801 to 86-811 may be appealed by any party to the proceeding in accordance with sections 75-136 to 75-139.

Sec. 2. That section 86-804, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

86-804. The commission shall provide the Legislature with an annual report on or before January 5 September 30 of each year on the status of the Nebraska telecommunications industry. The report shall describe:

(1) The quality of telecommunications services being provided to the citizens of Nebraska; (2) the availability of diverse and affordable telecommunications services to all of the people of Nebraska; and (3) the level of rates of local exchange companies and interexchange telecommunications companies. The report also shall address the question of the need for further legislation to achieve the purposes of sections 86-801 to 86-811.

Sec. 3. That original sections 86-803 and 86-804, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 4. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.

LEGISLATIVE BILL 292

Approved by the Governor April 5, 1991

Introduced by Landis, 46

AN ACT relating to credit services; to adopt the Credit Services Organization Act.
Be it enacted by the people of the State of Nebraska,

Section 1. This act shall be known and may be cited as the Credit Services Organization Act.

Sec. 2. For purposes of the Credit Services Organization Act:

(1) Buyer shall mean an individual who is solicited to purchase or who purchases the services of a credit services organization;

(2) Consumer reporting agency shall have the meaning assigned by the Fair Credit Reporting Act, 15 U.S.C. 1681a(f);

(3) Credit services organization shall mean a person who, with respect to the extension of credit by others and in return for the payment of money or other valuable consideration, provides or represents that the person can or will provide any of the following services:

(a) Improving a buyer's credit record, history, or rating;

(b) Obtaining an extension of credit for a buyer; or

(c) Providing advice or assistance to a buyer with regard to subdivision (a) or (b) of this subdivision;

(4) Extension of credit shall mean the right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal, family, or household purposes; and

(5) Person shall include individual, corporation, company, association, partnership, and other business entity.

Sec. 3. (1) The following shall be exempt from the Credit Services Organization Act:

(a) A person authorized to make loans or extensions of credit under the laws of this state or the United States who is subject to regulation and supervision by this state or the United States or a lender approved by the United States Secretary of Housing and Urban Development for participation in a

mortgage insurance program under the National Housing Act, 12 U.S.C. 1701 et seq.;

(b) A bank or savings and loan association whose deposit or accounts are eligible for insurance by the Federal Deposit Insurance Corporation or a subsidiary of such a bank or savings and loan association;

(c) A credit union doing business in this state;

(d) A nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

(e) A person licensed as a real estate broker or salesperson under the Nebraska Real Estate License Act acting within the course and scope of that license;

(f) A person licensed to practice law in this state acting within the course and scope of the person's practice as an attorney;

(g) A broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission acting within the course and scope of that regulation;

(h) A consumer reporting agency;

(i) A person whose primary business is making loans secured by liens on real property;

(j) A person, firm, corporation, or association licensed as a collection agency in this state or a person holding a solicitor's certificate in this state acting within the course and scope of that license or certificate; and

(k) A person licensed to engage in the business of debt management pursuant to sections 69-1201 to 69-1217.

(2) The burden of proving an exemption under this section shall be on the person claiming the exemption.

Sec. 4. A credit services organization, a salesperson, agent, or representative of a credit services organization, or an independent contractor who sells or attempts to sell the services of a credit services organization shall not:

(1) Charge a buyer or receive from a buyer money or other valuable consideration before completing performance of all services, other than those described in subdivision (2) of this section, which the credit services organization has agreed to perform for the buyer unless the credit services organization has obtained a surety bond or established and maintained a surety account as provided in section 5 of this act;

(2) Charge a buyer or receive from a buyer money or other valuable consideration for obtaining or attempting to obtain an extension of credit that the credit services organization has agreed to obtain for the buyer before the extension of credit is obtained;

(3) Charge a buyer or receive from a buyer money or other valuable consideration solely for referral of the buyer to a retail seller who will or may extend credit to the buyer if the credit that is or will be extended to the buyer is substantially the same as that available to the general public;

(4) Make or use a false or misleading representation in the offer or sale of the services of a credit services organization, including (a) guaranteeing to erase bad credit or words to that effect unless the representation clearly discloses that this can be done only if the credit history is inaccurate or obsolete and (b) guaranteeing an extension of credit regardless of the person's previous credit problem or credit history unless the representation clearly discloses the eligibility requirements for obtaining an extension of credit;

(5) Engage, directly or indirectly, in a fraudulent or deceptive act, practice, or course of business in connection with the offer or sale of the services of a credit services organization;

(6) Make or advise a buyer to make a statement with respect to a buyer's credit worthiness, credit standing, or credit capacity that is false or misleading or that should be known by the exercise of reasonable care to be false or misleading to a consumer reporting agency or to a person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit; or

(7) Advertise or cause to be advertised, in any manner whatsoever, the services of a credit services organization without filing a registration statement with the Secretary of State under section 6 of this act unless otherwise provided by the Credit Services Organization Act.

Sec. 5. (1) A credit services organization conducting business in this state shall obtain a surety bond or establish a surety account which complies with this section. The bond or account shall be in the amount of one hundred thousand dollars.

(2) If a surety bond is obtained, the bond shall be issued by a surety company authorized to do business in this state and a copy of the bond shall be filed with the Secretary of State. If a surety account

is established, the account shall be established and maintained at a federally insured bank or savings and loan association located in this state and notification of the depository, the trustee, and the account number shall be filed with the Secretary of State.

(3) The bond or account shall be in favor of the state for the benefit of any person who is damaged by any violation of the Credit Services Organization Act. The bond or account shall also be in favor of any person damaged by such a violation.

(4) Any person claiming against the bond or account for a violation of the act may maintain an action at law against the credit services organization and against the surety or trustee. The surety or trustee shall be liable only for damages awarded under section 10 of this act. The aggregate liability of the surety or trustee to all persons damaged by a credit services organization's violation of the act shall not exceed the amount of the bond or account.

(5) A depository holding money in a surety account under the act shall not convey money in the account to the credit services organization that established the account or a representative of the credit services organization unless the credit services organization or representative presents a statement issued by the Secretary of State indicating that subsection (6) of this section has been satisfied in relation to the account. The Secretary of State may conduct investigations and require submission of information as necessary to enforce this subsection.

(6) The bond or account shall be maintained until two years after the date that the credit services organization ceases operation in this state.

Sec. 6. (1) A credit services organization shall file a registration statement with the Secretary of State before conducting business in this state. The registration statement shall contain:

(a) The name and address of the credit services organization; and

(b) The name and address of any person who directly or indirectly owns or controls ten percent or more of the outstanding shares of stock in the credit services organization.

(2) The registration statement shall also contain either:

(a) A full and complete disclosure of any litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization; or

(b) A notarized statement that there has been no litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization.

(3) The credit services organization shall update the registration statement within ninety days after the date on which a change in the information required in the statement occurs.

(4) Each credit services organization registering under this section shall maintain a copy of the registration statement in the files of the credit services organization. The credit services organization shall allow a buyer to inspect the registration statement on request.

(5) The Secretary of State may charge each credit services organization that files a registration statement with the Secretary of State a reasonable fee not to exceed one hundred dollars to cover the cost of filing. The Secretary of State shall not require a credit services organization to provide information other than that provided in the registration statement.

Sec. 7. (1) Before executing a contract or agreement with or receiving money or other valuable consideration from a buyer, a credit services organization shall provide the buyer with a written statement containing:

(a) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total cost of the services;

(b) A statement explaining the buyer's right to proceed against the surety bond or surety account required by section 5 of this act;

(c) The name and address of the surety company that issued the bond or the name and address of the depository and the trustee and the account number of the surety account;

(d) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by a consumer reporting agency as provided by the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.;

(e) A statement that the buyer's file is available for review at no charge on request made to the consumer reporting agency within thirty days after the date of receipt of notice that credit has been denied and that the buyer's file is available for a minimal charge at any other time;

(f) A complete and accurate statement of the buyer's right to dispute directly with the consumer

reporting agency the completeness or accuracy of any item contained in a file on the buyer maintained by the consumer reporting agency;

(g) A statement that accurate information cannot be permanently removed from the files of a consumer reporting agency;

(h) A complete and accurate statement of when consumer information becomes obsolete and of when consumer reporting agencies are prevented from issuing reports containing obsolete information; and

(i) A complete and accurate statement of the availability of nonprofit credit counseling services.

(2) The credit services organization shall maintain on file, for a period of two years after the date the statement is provided, an exact copy of the statement, signed by the buyer, acknowledging receipt of the statement.

Sec. 8. (1) Each contract between the buyer and a credit services organization for the purchase of the services of the credit services organization shall be in writing, dated, and signed by the buyer and shall include:

(a) A statement in type that is boldface, capitalized, underlined, or otherwise set out from surrounding written materials so as to be conspicuous, in immediate proximity to the space reserved for the signature of the buyer, as follows: "You, the buyer, may cancel this contract at any time before midnight of the third day after the date the contract is signed. See the attached notice of cancellation form for an explanation of this right.";

(b) The terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to another person;

(c) A full and detailed description of the services to be performed by the credit services organization for the buyer, including all guarantees and all promises of full or partial refunds, and the estimated length of time, not to exceed one hundred eighty days, for performing the services; and

(d) The address of the credit services organization's principal place of business and the name and address of its agent in the state authorized to receive service of process.

(2) The credit services organization shall return any payment made by a buyer under the contract if the buyer cancels the contract within three days after it is signed. The payment shall be returned within ten

days after the date the organization receives the cancellation notice from the buyer.

(3) The contract shall have attached two easily detachable copies of a notice of cancellation. The notice shall be in boldface in the following form:

Notice of Cancellation

You may cancel this contract, without any penalty or obligation, within three days after the date the contract is signed.

If you cancel, any payment made by you under this contract will be returned within ten days after the date of receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed, dated copy of this cancellation notice or other written notice to: (name of seller) at (address of seller) (place of business) not later than midnight (date) I hereby cancel this transaction.

(date)

(purchaser's signature)

(4) The credit services organization shall give to the buyer a copy of the completed contract and all other documents the credit services organization requires the buyer to sign at the time they are signed.

(5) The breach by a credit services organization of a contract under the Credit Services Organization Act or of any obligation arising from a contract under the act shall be a violation of the act.

Sec. 9. A credit services organization shall not attempt to cause a buyer to waive a right under the Credit Services Organization Act. A purported waiver by a buyer of any part of the act shall be void.

Sec. 10. A buyer injured by a violation of the Credit Services Organization Act may bring an action for recovery of damages. The damages awarded shall not be less than the amount paid by the buyer to the credit services organization plus reasonable attorney's fees and court costs.

Sec. 11. The Attorney General or a buyer may bring an action in district court to enjoin a violation of the Credit Services Organization Act.

Sec. 12. A violation of the Credit Services Organization Act shall be a deceptive trade practice under the Uniform Deceptive Trade Practices Act.

Sec. 13. An action may not be brought under section 10 or 12 of this act after four years after the date of the execution of the contract for services to which the action relates.

Sec. 14. A person who violates the Credit

Services Organization Act shall be guilty of a Class II misdemeanor.

Sec. 15. The remedies provided by the Credit Services Organization Act shall be in addition to other remedies provided by law.