

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

391H0490

HOUSE BILL NO. 1228

Introduced by: Representatives Olson (Mel), Begalka, Jaspers, and Nesselhuf and Senators Whiting, Hutmacher, Munson, Reedy, and Volesky

1 FOR AN ACT ENTITLED, An Act to provide for the creation of a no solicitation calls list for
2 persons wishing not to receive unsolicited telephone calls, to create a telephone solicitation
3 account, and to establish certain fees and civil penalties.

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

5 Section 1. That § 49-31-1 be amended to read as follows:

6 49-31-1. Terms used in this chapter mean:

- 7 (1) "Addressable," enabling users to connect and communicate with a specific party easily
8 and securely on a dial-up, addressable basis;
- 9 (2) "Available," ensuring that network services are available if the user requires them,
10 even at times of peak usage; designed to be a nonblocking network, minimizing
11 network contention;
- 12 (3) "Broadband network," the broadband network extends the range of fully switched,
13 addressable, robust transport services over the fiber network which increase in
14 multiples of OC-1 (51.84 Mbps), including OC-3 (155.52 Mbps) and OC-12 (622.08
15 Mbps);



- 1 (4) "Centron and centron-like services," services which provide custom switching features
2 which include distributive dial tone, select number screening, toll restriction and
3 screening, nonattendant busy out, nonattend and call transfer, and select trunk hunting
4 and screening;
- 5 (5) "Commission," the Public Utilities Commission;
- 6 (6) "Common carrier," anyone who offers telecommunications services to the public;
- 7 (7) "Eligible telecommunications carrier," a local exchange carrier designated by the
8 commission pursuant to 47 U.S.C. § 214(e) as of January 1, 1998, as eligible to
9 receive universal service support funding;
- 10 (8) "Feature rich," providing the specific features and functionality required by users'
11 voice, data, video, graphics, imaging, and multimedia applications; functionally
12 beyond mere transport;
- 13 (9) "Incumbent local exchange carrier," a local exchange carrier, including successors and
14 assigns, which was providing local exchange service within a defined service area in
15 this state on or before February 8, 1996;
- 16 (10) "Interexchange telecommunications service," telecommunications service between
17 points in two or more exchanges;
- 18 (11) "LATA," a local access and transport area;
- 19 (12) "Local exchange area," a geographic area established by a local exchange carrier as
20 filed with or approved by the commission for the administration of local
21 telecommunications service which may consist of one or more central offices or wire
22 centers together with associated facilities used in furnishing telecommunications
23 service in that area;
- 24 (13) "Local exchange service," the access to and transmission of two-way switched

- 1 telecommunications service within a local exchange area;
- 2 (14) "Narrowband network," a fully switched digital network covering the transport range
3 from 0 to 144,000 bits per second (144 Kbps), offering two 64 Kbps information B
4 (Bearer) channels and a 16 Kbps signaling D (Delta) channel;
- 5 (15) "New products and services," any new product or service introduced after July 1,
6 1988, which is not functionally required to provide local exchange service.
7 Repackaging of any product or service which is fully competitive with any service
8 regulated as emerging competitive or noncompetitive is not considered a new product
9 or service;
- 10 (16) "Optional service," a limited or discretionary service offered by a telecommunications
11 company which is not functionally required for the provision of noncompetitive
12 services and which the customer has the option to purchase;
- 13 (17) "Private," ensuring confidentiality and integrity of network transport of messages
14 without dependency on specialized customer premise security devices;
- 15 (18) "Rate of return regulation," the procedure used by the commission to approve the
16 charge for a service which gives due consideration to the public need for adequate,
17 efficient, and reasonable service and to the need of the public utility for revenues
18 sufficient to enable it to meet its total current cost of furnishing such service, including
19 taxes and interest, and including adequate provision for depreciation of its utility
20 property used and necessary in rendering service to the public, and to earn a fair and
21 reasonable return upon the value of its property;
- 22 (19) "Register," a list of names, addresses, and telephone numbers of residential telephone
23 subscribers who have properly enrolled with the commission to prevent unsolicited
24 telephone calls;

1 (20) "Residential telephone subscriber," any person residing in South Dakota who has
2 residential telephone service;

3 (21) "Robust," easily and economically sustaining the rigors of growth and extensive public
4 use;

5 ~~(20)~~(22) "Rural telephone company," a local exchange company as defined in 47 U.S.C.
6 § 153(37) as of January 1, 1998;

7 ~~(21)~~(23) "Secure," physically precluding unwanted access to network and information;

8 ~~(22)~~(24) "Service area," a geographic area established by the commission for the
9 purpose of determining universal service obligations and support mechanisms.
10 For a rural telephone company, the service area is the company's study area or
11 any other area designated jointly by the commission and the Federal
12 Communications Commission pursuant to 47 U.S.C. § 214(e)(5) as of
13 January 1, 1998;

14 ~~(23)~~(25) "Standard," supporting universal interfaces and networking standards and
15 protocols of generally accepted standards setting bodies;

16 ~~(24)~~(26) "Switched," providing circuit, packet, or channel type switching, each suited
17 to specific application requirements;

18 ~~(25)~~(27) "Switched access," an exchange access service purchased for the origination
19 and termination of interexchange telecommunications services which includes
20 central office switching and signaling, local loop facility, or local transport;

21 ~~(26)~~(28) "Telecommunications company," any person or municipal corporation owning,
22 operating, reselling, managing, or controlling in whole or in part, any
23 telecommunications line, system, or exchange in this state, directly or
24 indirectly, for public use. For purposes of this definition the term, for public

1 use, means for the use of the public in general or for a specific segment of the
2 public, or which connects to the public in general or for a specific segment of
3 the public, or which connects to the public switched network for access to any
4 telecommunications service;

5 ~~(27)~~(29) "Telecommunications service," the transmission of signs, signals, writings,
6 images, sounds, messages, data, or other information of any nature by wire,
7 radio, lightwaves, electromagnetic means, or other similar means. It does not
8 include the provision of terminal equipment used to originate or terminate such
9 service, broadcast transmissions by radio, television, and satellite stations
10 regulated by the Federal Communications Commission and one-way cable
11 television service;

12 (30) "Telephone solicitation call," a call made by a telephone solicitor, originating from
13 South Dakota or elsewhere, for the purpose of soliciting a sale of any consumer
14 goods or services to the person called, or for the purpose of soliciting an extension
15 of credit for consumer goods or services to the person called, or for the purpose of
16 obtaining information that may be used for the direct solicitation of a sale of consumer
17 goods or services to the person called or an extension of credit for such purposes;

18 (31) "Telephone solicitor," any person or organization who individually or through
19 salespersons, makes or causes to be made a telephone solicitation call. This term does
20 not include any not-for-profit or charitable organization exempt from federal income
21 taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 as of
22 January 1, 2002;

23 (32) "Unsolicited telephone call," a telephone solicitation call other than a call made:
24 (a) In response to an express request of the person called;

1 (b) Primarily in connection with an existing debt or contract, payment or
2 performance of which has not been completed at the time of such call;

3 (c) To any person with whom the telephone solicitor has an existing business
4 relationship; or

5 (d) By a newspaper publisher or such publisher's agent or employee in connection
6 with such publisher's business;

7 ~~(28)~~(33) "Wideband network," the wideband network extends the range of fully
8 switched, digital, addressable information transport from the 144 Kbps to the
9 DS3 rate of 44.736 Mbps, including the DS1 and DS2 rates of 1.544 Mbps and
10 6.312 Mbps, respectively.

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

13 Any telephone solicitor who makes unsolicited telephone calls shall institute procedures
14 which comply with the provisions of this Act for obtaining a list of persons who do not wish to
15 receive unsolicited telephone calls made by or on behalf of the telephone solicitor. No telephone
16 solicitor who makes unsolicited telephone calls may call any number listed on the register. The
17 commission may promulgate rules, pursuant to chapter 1-26, concerning procedures,
18 requirements, standards concerning the use of the register, and application of the civil fines.

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

21 The commission shall maintain a register of names, addresses, and telephone numbers of each
22 South Dakota residential telephone subscriber who has elected not to receive unsolicited
23 telephone calls. The commission shall update the register every two months.

24 Section 4. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 Any telephone solicitor who makes unsolicited telephone calls to South Dakota residential
3 telephone subscribers shall purchase a copy of the register from the commission. A telephone
4 solicitor shall submit a written application to the commission to purchase a copy of the register.
5 The application shall contain the telephone solicitor's name, address, telephone number, and
6 name of the agent for service of process along with a notarized statement from an officer of the
7 company affirming the company will comply with the provisions of this Act.

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

10 Any telephone solicitor who makes unsolicited telephone calls to South Dakota residential
11 telephone subscribers shall pay to the commission an annual fee of five hundred dollars. The
12 annual fee shall cover the time period from July first through June thirtieth, or any part thereof,
13 and entitles the telephone solicitor to receive copies of updated registers produced by the
14 commission for that time period. A copy of the register may be provided electronically or by
15 paper copy. Fees collected under this section shall be credited to the telephone solicitation
16 account which is hereby established in the state treasury. Any interest earned on money in the
17 fund shall be deposited in the fund. The money is continuously appropriated to the use of the
18 commission to implement and administer the provisions of this Act.

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

21 The commission shall establish and provide for the operation of a register. The register may
22 be operated by the commission or by another entity under contract with the commission. A
23 residential telephone subscriber may enroll on the register in accordance with procedures
24 prescribed by the commission. Enrollment on the register is effective sixty days following the first

1 day of the succeeding month of enrollment by the subscriber. Fees collected under this section
2 shall be credited to the telephone solicitation account established in section 5 of this Act.

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

5 A residential telephone subscriber remains on the register for a period of two years or until
6 the subscriber requests that the commission remove the subscriber's name from the register.

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

9 Any telecommunications company that provides local exchange service shall inform its
10 customers of the provisions of this Act by annual inserts in the billing statements mailed to its
11 customers and by publication of the notice in the consumer pages of its telephone directories.

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

14 Any person who violates this Act or any rules promulgated pursuant to this Act is subject
15 to a civil penalty to be imposed by the commission, after notice and opportunity for hearing. The
16 commission may impose a civil fine of not more than five thousand dollars for each offense. In
17 determining the amount of the penalty upon finding a violation, or the amount of a compromise
18 settlement, the commission shall consider the appropriateness of the penalty to the size of the
19 business of the person charged, prior offenses and compliance history, and the good faith of the
20 person charged in attempting to achieve compliance. Any penalty collected pursuant to this
21 section shall be credited to the telephone solicitation account established pursuant to section 5
22 of this Act.